

ALBANY

THE CRISIS IN
GOVERNMENT

LOUIS WALDMAN



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Albany:
The Crisis in Government

ALL FOOL'S DAY AT ALBANY



Courtesy of New York World

April 1 was an appropriate date for the expulsion of the five Socialist Assemblymen from the New York State Legislature.

Albany:

The Crisis in Government

The History of the Suspension, Trial and Expulsion
from the New York State Legislature in 1920
of the Five Socialist Assemblymen by
Their Political Opponents.

By
LOUIS WALDMAN

With an Introduction by
SEYMOUR STEDMAN



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Preface

In recent years the energies and intelligence of statesmen and thinkers in the whole civilized world have been directed to the creation of a governmental apparatus which is susceptible to change in accordance with the ever-changing conditions and facts of life. It was sought to create processes by which the complex interests in society may express their will and affect their purposes.

We, in the United States, felt sure that we possessed that instrument. Ours was a Constitutional Representative Government, carrying within it the possibility of its own change and modification, thus being an adequate agency for peaceful social progress. We were proud of this fact.

This instrument has been brutally assaulted. It has been badly damaged, if not completely destroyed.

The story of this assault is contained in the following pages. The characters of the assailants, the forces and interests back of them, the nature of the assault, and the defenders of representative government, are all described.

There are four episodes to this story: The suspension; the reaction of the country and of the world to the suspension; the "trial," and the expulsion.

The suspension took place on January 7, 1920. The trial began January 20 and ended March 11. The expulsion took place March 31, 1920.

Between January 7 and March 31 enough had happened to fill many, many volumes. The record of the proceedings of the trial alone, including exhibits, con-

sists of close to 2,000,000 words. Space did not permit of putting it all in this volume. Much of the testimony on both sides deserves to be quoted in full. The side of the prosecution quoted in full would show that its entire spirit was that of the Spanish Inquisition. The side of the "Defense" is of educational value. Enough of both sides, however, has been quoted to give the reader an adequate idea of the conflict. The speeches of counsel have been much condensed.

I look forward to a lively condemnation from all—from those I quoted, why I did not quote enough; from those I did not quote, why I didn't.

Only grammatical errors due to inaccuracies of the official record have been corrected, otherwise no editing of any kind was done.

The human interest side of the story I drew from personal observation. I was present on all occasions described in this book.

I am deeply indebted to Mr. Phillips Russell for his valuable assistance in preparing the manuscript.

LOUIS WALDMAN.

Contents

	Page
Preface	vii
Introduction, Seymour Stedman	xi
Chapter	
I The Suspension	1
II The Country's Reaction to the Suspension	14
III The Tide of Protest Rises	29
IV The Opening of the Trial	50
V Socialists Challenge Judges	63
VI The Invisible Empire	80
VII The Prosecution's "Evidence"	104
VIII The Defense Opens: The Socialists and the League of Nations	114
IX The Committee Instructed in Socialism— Lee and Branstetter on the Stand	126
X The Suspended Assemblymen on the Stand	135
XI The Summing-Up for the Defense—Morris Hillquit's Speech	150
XII The Prosecution Sums Up—Speeches by Messrs. Conboy and Brown	192
XIII Seymour Stedman Concludes the Summing Up for the Defense	214
XIV The Expulsion	220

Introduction

By Seymour Stedman

During the war the people of this country with little or no protest accepted the crumbling of sacred old traditions, the bending and even the breaking of law to serve the war aims and purposes of the Government. They were not, however, prepared for the destruction of constitutional government during a time of peace. This shock came on January 7, 1920.

On this day in Albany, New York, the New York Legislature assembled. The Assembly was called to order. It included among its 150 members five Socialists who had been elected from five assembly districts in New York City. These five, along with the others, took the oath of office in accordance with the requirements of the Constitution. They participated in the organization of the House by voting for the Speaker, the Clerk, the Sergeant-at-Arms and other officers, which occupied something over two hours, and then Thaddeus C. Sweet, the newly elected Speaker, directed the Sergeant-at-Arms to present before the bar of the House these five Assemblymen. The Speaker informed the Assemblymen that "it is every citizen's right to have his day in court. And if this House shall adopt a resolution declaring your seat herein vacant, pending a hearing before a tribunal of this House, you will be given an opportunity to appear before such tribunal to prove your right to a seat in this legislative body."

The Republicans and Democrats of the Assembly had arrived at a complete understanding. They were not surprised; they were pleased at the opportunity, which they believed now open, to advance their political prestige by an unwarranted, unjust and illegal attack upon a minority political party. The Speaker saw his ambitions for a gubernatorial nomination

looming up as a reward for this assassination of a democratic-republican form of government. Following the statement of the Speaker, Mr. Adler, leader of the Republicans on the floor, introduced a resolution to carry into effect the statement of the Speaker, that the right of these Assemblymen should be investigated and that they should be given the privilege to prove "their right to a seat in this legislative body."

These men were presumed guilty; it was now their privilege to prove their innocence. But this was not enough; the resolution that passed the House declared that the Assemblymen should "be denied their seats pending investigation and other qualifications"; "that the respondent Assemblymen were guilty of belonging to the Socialist Party, which had expressed solidarity with Soviet Russia and the Communist International of Moscow; that they had pledged themselves to be guided by the Constitution and Platform of the party of which they were members; that they belonged to a dues-paying political party; and that their party opposed war."

The hearing upon this was referred to the Judiciary Committee, consisting of thirteen members, of which Mr. Louis Martin was the Chairman. The announcement of this proceeding in the public press did not bring the wild and enthusiastic approval which no doubt the Assemblymen expected. The New York Bar Association, through a special committee, consisting of the Honorable Charles Evans Hughes, late Governor of New York, Associate Justice of the United States Supreme Court, and Republican candidate for President; Morgan J. O'Brien, a former judge and distinguished member of the New York Bar; Louis Marshall, whose reputation as a constitutional lawyer is international; Joseph M. Proskauer, and Ogden L. Mills, rose instantly with a vigorous and forcible protest and issued a brief reciting facts supported by authorities, condemning the action of the Assembly. The papers of the country, especially those of New York, of both conservative and liberal policies, protested vigorously. Not that they were friendly to Socialism, but because they still believed there was need in the United States for a democratic-republican form of government.

On the 20th day of January, in the ornate and picturesque Assembly room, the hearing was opened by the Judiciary Committee. The hall was crowded among the audience being some of the most distinguished men in the civic and public life of the State.

At the threshold of the proceedings Charles Evans Hughes arose and said, "I crave the courtesy of the Judiciary Committee to submit a brief statement on behalf of the Association of the Bar of the City of New York—I ask the courtesy of the Committee to make a brief statement—this special committee does not appear on behalf of the members of the Assembly under suspicion, nor on behalf of the Socialist Party, but on behalf of the New York Bar and in the public interest. We desire to suggest the gravity of the matter—the importance of determining at the outset the applications of certain fundamental principles and of formulating a course of inquiry in such matters."

He was interrupted by the Chairman, who quickly disposed of the distinguished lawyer by announcing that no persons could participate in the proceedings except counsel representing the committee and counsel representing the ousted Assemblymen. The Chairman then read what he was pleased to call the rules which should guide the committee in its course of procedure. The document submitted said very little of rules, but amplified the resolution for investigating the Assemblymen. The charge made by the Speaker was not broad enough; the charge made by the Assembly was not broad enough; it needed a charge containing everything, and so the Judiciary Committee amplified by formulating charges of its own, "that the men mentioned were members of a party whose principles and doctrine as advocated called for and demanded the complete destruction of our form of Government by the fomentation of industrial unrest—that it favored absolute substitution of minority for majority rule; that it sympathized with Soviet Russia; that in open convention it denounced the war and its purposes and its motive as capitalistic, that they merely pretended to avail themselves of a legally established means of political representation and intended to overthrow this Government peacefully if possible, forcibly if necessary; that

they engaged in a large and well organized conspiracy to subvert the duty of law and to destroy the right to acquire and hold property honestly acquired, TO WEAKEN THE FAMILY TIE which they assert is the seed of capitalism, to destroy the influence of the church and overturn the whole fabric of a constitutional form of government. We intend the men under investigation shall have fair play; the case is not prejudged; the committee will sit with an open mind; the men shall be accorded the right to select their own counsel, and assistance will be given them in the procurement of evidence."

The committee's protestations of fairness and open-mindedness were too evidently the reaction of their real mental attitude to need comment. It was a clear, open, definite confession of bias, prejudice and a pre-determined purpose.

The New York Constitution was adopted in 1821, during a period of great national strife over free and slave states, territories and boundaries. The South was becoming alarmed and endeavoring to increase its public power. With this vividly before the minds of those who drew the Constitution, and to prevent any bare majority from using its power to rob a minority of its rights, provided for the taking of the Constitutional Oath and then concluded with these words, "AND NO OTHER OATH, DECLARATION OR TEST shall be required as a qualification for any office of public trust." This oath had been complied with by the Assemblymen. Some of them had been members of the Assembly during the years 1917, 1918 and 1919. No objection to their incumbency had been made during these years, though in the time of war. There was no legal, constitutional authority for excluding them for what had occurred prior to their election. This was recognized when they were permitted to sit in the Assembly and participate in the proceedings. No improper behavior, no conviction for an offense, no conduct of a disloyal character subsequent to their election or induction into office was charged against them personally.

Arguments to dismiss the proceedings and to seat the Assemblymen were so well, cogently and irresistible-

bly made by their counsel that the counsel representing the Committee, driven into an inextricable situation, in the true style of royal brigands, cut loose from all the restraints imposed by tradition and law with the triumphant announcement of the following: "The Assembly of the State of New York has the power, unqualified power, to expel any member **WITH OR WITHOUT REASON, WITH OR WITHOUT CAUSE**. You are the judges of cause. You may determine what in your judgment renders a man fit to sit in the Assembly, and nobody can question your conduct or your act. So here this Assembly in its entirety, acting upon the report of a committee or acting upon its own volition, has the undisputed and undeniable power to suspend or expel a member for anything that measures up to what you would **ASSUME TO BE** or **ASSERT TO BE** sufficient and adequate cause."

Mr. Stanchfield, the distinguished lawyer, understands full well the distinction between reason and cause. In using both terms he made this declaration of naked power and force without qualification or limitation; with or without reason, with or without cause. No reason and no cause required. This was a glorious hour for the Socialist movement and the Socialist Party of the United States. During three years that were filled with hatred and passion it stood forth sponsor and proclaimer of the two great ideals of American political life, the freedom of speech and freedom of the press, and now was passed to it the task of maintaining the existence and the perpetuity of democratic-representative government. The charge of defending these three great principles of government among civilized people, for which so great a price was paid, it gladly accepted in the face of an ugly, reactionary majority. The proceedings opened with the introduction of evidence offered in behalf of the Committee to sustain the charges.

At the close of the war the profiteers in the country at large, and especially in New York, were in need of a smoke-screen to hide their finance-patriotism, their hypocrisy from the eyes of honest people who had the welfare of their country more at heart than the con-

tents of their cash box. The Chamber of Commerce of New York bestirred itself. It adopted a resolution to investigate all radicals. The New York Legislature duplicated this resolution and appointed a committee, making Mr. Lusk its Chairman, which traveled from town to town gathering books with red covers, and green covers, and yellow covers; books on politics and books on travel, books on geology and books on sociology. Everything they could not understand was seditious, treasonable and disloyal; they were men of very limited understanding. The people were thoroughly alarmed, many of whom thought that the basements of New York were filled with guns and dynamite, and when the trial of these Assemblymen opened the people waited breathlessly for the great eruption that was to cover the earth with red ashes and light the sky with red flame, that would prove Speaker Sweet the savior of his country. But after the labor of many days, the mountain rumbling with heavy and light oratory, the mouse came forth—a stuffed toy from the Christmas shopping of the Lusk Committee.

The first witness on the stand was shown a little red book; it was in Yiddish, published by a Yiddish Branch never even heard of by Socialist officials or the respondent Assemblymen. It had an article which, as translated, deprecated political action; on cross-examination it was found to contain articles favoring political action; and then it developed that it was a book containing articles on various theories of political and industrial change.

This did not meet the public appetite which was whetted by startling promises. Something must be done; so the lawyers of the Committee discovered the Proclamation and War Program opposing the war, which was adopted by the Socialist Party in 1917, and which was circulated by the hundreds of thousands and read all over the country. This startled the troglodytes. But those who had ideas dating this side of the flood waited patiently for something new. Then was produced the Constitution of the Socialist Party, in which the members pledged themselves to support the constitution and the principles of the party, the

party having a right to expel them if they did not do so. This was so novel that it was immediately fastened upon by counsel for the committee and by the Committeemen as a dangerous and revolutionary piece of literature. From the time this was introduced in evidence, on the 22nd day of January, until the closing arguments in March it was never lost sight of. It was contended that it violated the laws of the State and the Constitution of the State because the Socialist Party could expel its members if they did not in the Assembly vote according to the principles and the platform of the party. That men seeking office should actually pledge themselves in writing to live up to the principles, their party professed, was flaunting treason and sedition in the faces of gentlemen who are making law in a state capitol notorious, not because of its Elizabethan beauty, but for the brazen graft which accompanied its construction.

The Socialist Party Constitution required that the members should sign a resignation blank which might be filed if they were faithless to their political promises. The Assemblymen had not signed one in this instance, but that made no difference to counsel for the Committee. They believed in it; that is, they believed that the Socialist Party had a moral right to the resignation of its candidates who betrayed their Party and its cause. This, too, was mentioned and commented upon and elaborated upon not less than sixty or seventy times during the proceedings; that persons guilty of political perfidy should be chastised by withdrawal from office was considered a virtue by the Socialists, but it was here laid against them as a vice.

Counsel for the Committee charged that "aliens, minors and women are admitted to membership." In revising this statement they omitted women, realizing that they are no longer among the political outcasts. They hung on to "aliens" until the evidence disclosed that the members of the Socialist Party are overwhelmingly native-born. The fact that in many states aliens vote for all state offices further weakened the legal and moral force of this objection. As there was no evidence of minors belonging to the Party, this whole contention waned. The scene shifted, and the setting

was prepared for a crushing attack. Entered Peter Collins, sociologist, economist, expert on Socialism. He had learned about Socialism while mingling with Socialists "in the lobby of the Rand School," and talking with Socialists after meetings, and debating with Socialists. He was very sure. Mr. Collins declared that he was a Catholic, a member of the Knights of Columbus, and that the Socialists undermined the influence of the Church; they desired to destroy the home, break family ties; they believed in the rule and the triumph of the minority; they were against the Government; in fact they were not in favor of anything except discord, disintegration, savagery, and chaos. It is to the credit of counsel for the Committee that in summing up their case they passed by the testimony of Mr. Collins, which was of considerable length, in shame and silence.

Failing in the attack upon the philosophy of the movement and realizing that the expectant audience was becoming disappointed, they shifted the scene again, and were now going to center a fire upon some of the representatives. Solomon was singled out, and there was ushered to the front a Miss Chivers. She testified that she attended a street meeting where Solomon was speaking, at which time a bus was going by containing soldiers who were recruiting and that a band was playing at a short distance; that these soldiers asked Solomon for the use of his stand and Solomon replied, "No, the gutter is good enough for you." On further examination she added to her testimony to strengthen it, that Solomon at the same moment had spit upon the flag, and that he said he would not wipe his shoes on the flag. Under the circumstances this statement was shown to be so improbable that it was ridiculed by the public press, and counsel refrained from bringing to the stand a Mrs. Brady, who Miss Chivers said was with her at the time. She had kept this story buried in the heart of an anti-Socialist Society to which she belonged, for over two years, and she was not quite sure of her age, two or three years not making any impression on her memory. Whether she was fifteen or eighteen at the time she heard the statement she apparently was unable to tell.

But with infinite patience and not to be thwarted by this collapse, a new attack was made; this time on Claessens. In the polling districts where Claessens was running, he had made the statement that dope fiends, cut-throats, and brigands had robbed the ballot box, a fact undeniably proven since the election, and in denouncing them, although advocating peaceful political means, he mentioned such proceedings and outrages as an excuse for violence. He was examined at length when on the stand and although he told of the most infamous and criminal outrages perpetrated by ballot box thieves and looters, there was no moral indignation expressed by the Committee or its counsel against the crime at the ballot box; only a feeling of hostility to Claessens because he was not a Democrat or a Republican.

Then Waldman came in for an attack. At a convention a year ago, in a speech *OPPOSING* militarism, he had made a statement which was interpreted by the Committee as a suggestion to the soldiers to use their weapons against the capitalists. Yet on the floor of the Assembly, a member, a Democrat, in the presence of all the other Assemblymen and the Speaker said that he hoped when the men returned from Europe they would keep their cartridges and guns so that they could use them. He said this because he was enraged over the destruction of his saloon business by the Prohibition Amendment. He was not even reprimanded, except by a Socialist.

The defendants called Morris Hillquit and Algernon Lee. The former gave a complete detailed statement and explanation of the philosophy, tactics, programs and theories of the Socialist movement nationally and internationally and its political expression in various countries during times of peace and war; of its underlying economic basis and its social and political purposes. Algernon Lee gave an exposition of its national and international character, form and technique, and philosophy, the meaning of its various terms and their import as they relate to the particular problems presenting themselves from time to time for solution. The testimony of these two witnesses is at many points interwoven and will, together, furnish for some

time, to the intelligent readers of this country, a masterful and complete statement of the fundamentals of the movement, its political tactics and its ideals.

Norman Thomas, a clergyman, editor and publisher of *The World To-morrow*, testified to the relation between Socialism, the Church and the home. His evidence must be included to complete the story of the theoretical and practical phases of Socialism.

The Assemblymen were called and related their action in opposition to legislation creating an ice monopoly, and bills for fastening upon the people of New York filching water power companies, and with this an elucidation of bills introduced and supported by the Socialists to reduce the cost of living, to organize systematically state departments, and to promote social and industrial participation and activity by the people, especially in transportation and the distribution of food and also legislation to regulate the relation of landlords to their tenants and to curtail the exacting tribute levied by landlords as a result of an acute scarcity of housing facilities. Statesmanship of a high, constructive ability was shown in the evidence of the Assemblymen, in the masterful way they gathered the information and prepared their measures for adoption by the Assembly, only to be defeated at every turn by representatives whose interests were too closely allied with the great capitalistic combination of the Empire State.

The story of this proceeding constitutes a history of a legislative body excluding members because of the political principles of the party to which they belong. It is the first time in American history that such a proceeding has taken place. No autocrat, not even Louis XIV, who declared, "I am the state," ever announced a more complete and all-inclusive doctrine of brutal, naked power, unrestrained, power without limit, power without responsibility, than that invoked to justify this proceeding.

"The government of the people, by the people and for the people" will not perish, no matter what this Assembly may do from petty motives, immediate political expediency, self-assumed righteousness or a false and ignoble conception of patriotism.

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CHAPTER I THE SUSPENSION

On Election Day, November 4, 1919, five members of the Socialist Party were elected to the Assembly of the State of New York. They were: August Claessens, elected from the 17th Assembly District, Manhattan; Louis Waldman, elected from the 8th Assembly District, Manhattan; Samuel Orr, elected from the 4th Assembly District, The Bronx; Charles Solomon, elected from the 23rd Assembly District, Kings, and Samuel A. DeWitt, elected from the 3rd Assembly District, The Bronx. Of these five, August Claessens was returned for the third term, having been first elected in 1917. Waldman, Orr and Solomon had been returned for their second term. The only new member was DeWitt.

In due course, the County Clerks of New York, Kings, and The Bronx made out and mailed to these five a certificate of election. A typical one is that received by Waldman, which reads as follows:

"STATE OF NEW YORK
"COUNTY OF NEW YORK

"I, William F. Schneider, Clerk of the County of New York, do hereby certify that having examined the original statement and declaration of the votes cast at the general election held on the 4th day of November, 1919, for the office of Member of Assembly, of

the 8th Assembly District, do certify that Louis Waldman having received the greatest number of votes, was duly elected for the term of one year, beginning January 1, 1920.

"In witness thereof, I herewith set my hand and official seal, this 24th day of December, 1919.

"WILLIAM F. SCHNEIDER,

"County Clerk, New York County."

On January 7, 1920, the opening day of the Legislative session, the five Socialist Assemblymen presented themselves before the Secretary of State, Francis Hugo, and were duly sworn in. The Assembly was called to order by the clerk promptly at 12 o'clock on the same day. The first act was to call the roll, on which the names of the five Assemblymen were recorded, the five duly answering "present." The next business was the election of a Speaker. The Republicans nominated Thaddeus C. Sweet; the Democrats named Charles Donohue; and the Socialists August Claessens. The roll was again called and the members of the three parties represented recorded their votes for their designated candidates. The Republicans, being the majority party, easily elected their candidate by a vote of 110 to 40.

On being escorted to the Speaker's chair, Mr. Sweet delivered a speech of thanks and appreciation, taking occasion in the course of his remarks to condemn roundly what he deemed to be the evils of the day, including labor welfare legislation and the rising menace of Socialism. He then stepped down from the Speaker's platform and appointed as temporary presiding officer Louis M. Martin, of Oneida County, who was subsequently made Chairman of the Judiciary Committee. Then followed the reading of the Governor's

message, and the other official business, which consumed about two and a half hours.

Meantime, an apparently genial atmosphere pervaded the chamber. Members left their seats to greet each other, to inquire about each other's families, etc., and to carry on a generally friendly conversation. From these amenities, the Socialist members were by no means excluded. On the contrary, various members went out of their way, irrespective of party affiliations, to greet the Socialist Assemblymen smilingly. Among these friendly members was the minority leader, Charles Donohue, who came over to the Socialists and remarked: "You have five, we have thirty-five, so we will have forty to fight that crowd."

On his reappearance in the chamber, Speaker Sweet resumed the chair and proceeded with the air of a man having unquestioned authority. He remained standing, and then in cold, measured tones he said:

"The Chair directs the Sergeant-at-Arms to present before the Bar of the House Samuel A. DeWitt, Samuel Orr, Louis Waldman, Charles Solomon, and August Claessens."

The careless atmosphere that had prevailed in the House suddenly changed.

The Sergeant-at-Arms escorted the five Socialists to the "well" of the House, which is the depression in the center of the chamber, about six feet below the Speaker's chair. He said:

"Mr. Speaker, in accordance with your directions, I have presented the gentlemen that you have directed me to present."

The Speaker, in authoritative tones that waxed warmer as he proceeded, then delivered himself as follows:

"You, whom I have summoned before the Bar of this House, are seeking seats in this body—you who have

been elected on a platform that is absolutely inimical to the best interests of the State of New York and of the United States. That platform is the doctrine of the Socialist Party, and provides that every person elected thereupon subscribe to the rules and regulations, principles and tactics of that party. It is not truly a political party, but is a membership organization admitting within its ranks aliens, enemy aliens and minors. The constitution of that party at Section 5 thereof provides this—‘in all my political actions while a member of the Socialist Party, I agree to be guided by the Constitution and platform of the party,’ and Section 13, Subdivision F, of the State Constitution of the Socialist Party provides—‘for failing or refusing when elected to public office . . . to abide and carry out such instructions as he may have received from the dues-paying party organization or as prescribed by the State and National constitution.’

“It may be interesting to note that Ludwig C. A. K. Martens, the self-styled Soviet Ambassador and alien, who entered this country as a German in 1916, became a member of the Socialist Party upon his entry into this country, and took part in its deliberations. It is therefore quite evident that you, elected to public office, in spite of your oath of office, are bound to act subject to instructions received from an executive committee which may be made up in whole or in part of aliens or alien enemies, owing allegiance to governments or organizations whose interests may be diametrically opposed to the best interests of the United States and of the people of the State of New York. At the time of the entry of this country into the war, the National Convention of the Socialist Party of America at St. Louis, during its sessions from April 7 to April 14, 1917, adopted resolutions setting forth the stand of the Socialist Party toward the war,

THE MACHINERY OF CRISIS



Courtesy of New York World

THE PARTY LASH!

and urged that the only struggle which would justify its members in taking up arms was the great struggle of the working class, to free itself from economic exploitation and political oppression, and in such resolution appeared the following words:—‘As against the false doctrine of national patriotism, we uphold the ideal of the international working class solidarity.’ The manifesto of the Socialist Party, in convention assembled, adopted a resolution of which the following is a part: ‘We, the organized Socialists of America, declare our solidarity with the revolutionary workers of Russia in support of the Government of their Soviets, with the radical Socialists of Germany, Austria and Hungary . . . and with the Socialist organizations in England, France, Italy and other countries, who during the war, as after the war, have remained true to the principles of uncompromising international Socialism—Long Live the International Socialist Revolution, the only hope of the suffering world’; and in order that we may understand what this solidarity means, I quote from page 16 of the manifesto of the Communist International as follows: ‘Civil war is forced upon the laboring classes by their arch-enemies. The working class must answer blow for blow, if it will not renounce its own object and its own future, which is at the same time the future of all humanity. The Communist parties, far from conjuring up civil war artificially, rather strive to shorten its duration as much as possible; in cases, it has become an iron necessity to minimize the number of its victims, and above all to secure victory for the proletariat. This makes necessary the disarming of the bourgeoisie at the proper time, the arming of laborers, and the formation of the Communist army as the protector of the rule of the proletariat and the inviolability of the social structure. Such is the Red Army of

Soviet Russia, which rose to protect the achievements of the working class, against every assault from within or without. The Soviet army is inseparable from the Soviet State.'

"It is every citizen's right to his day in court. If this house should adopt a resolution declaring your seat herein vacant, pending a hearing before a tribunal of this house, you will be given an opportunity to appear before such tribunal to prove your right to a seat in this legislative body, and upon the result of such hearing and the findings of the Assembly tribunal, your right to participate in the actions of this body will be determined."

The House hesitated at first, then broke into scattered applause. The five men who stood before the bar of the House gave no sign of any perturbation. There was an instant's silence, and then Mr. Claessen's voice broke the spell.

"Mr. Speaker," he said. "Do I understand that we have no rights until this body officially decides?"

"If the House so decides," said the Speaker.

At this point Mr. Waldman spoke up. Getting the Speaker's recognition, he said:

"According to the rules adopted by this body, only a little while ago, a member elected to this House can only be unseated when charges are filed against him and the Judiciary Committee reports on the situation and then action is taken by the House. Is it not true?"

The Speaker hesitated for a moment. He answered: "The chair rules that the Majority Leader be given an opportunity to present his resolution."

Mr. Sweet's reply was not at all to the point, but it served as an answer. It left the five members convinced that no information as to their rights could be expected from the Chair. They returned to their seats, to await the next move of their opponents.

Mr. Simon Louis Adler, the Republican Majority Leader, representing the Second Assembly District of Monroe County, arose.

"Mr. Speaker," he cried.

"The gentleman from Monroe, Mr. Adler," said the Speaker.

"I offer a privileged resolution and move its adoption," said Mr. Adler.

Said the Speaker, "The gentleman from Monroe, Mr. Adler, offers a privileged resolution, which the clerk will read."

The clerk then read the following resolution, which is now historic as the resolution of suspension:

"WHEREAS, Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon are members of the Socialist Party of America, and

"WHEREAS, the said Socialist Party did at its official party convention, held at the city of Chicago, Illinois, in the month of August, 1919, declare its adherence to and solidarity with the revolutionary forces of Soviet Russia, and did pledge itself and its members to the furtherance of the International Socialist Revolution and,

"WHEREAS, by such adherence and by such declaration made by the said party, the said party has endorsed the principles of the Communist International now being held at Moscow, Russia, which International is pledged to the forcible and violent overthrow of all organized government now existing, and

"WHEREAS, Section 5 of Article 2 of Constitution of the Socialist Party of America provides that each member of the Socialist Party of America must subscribe to the following: 'in all my political actions while a member of the Socialist Party, I agree to be guided by the Constitution and platform of the party,' and

"WHEREAS, Section 13, Subdivision A, of the State Constitution of the Socialist Party of the State of New York provides, 'A member may be expelled from the party, or may be suspended for a period not exceeding one year for the following offenses: for failing or refusing, when elected to a public office . . . to abide by and carry out such instructions as he may have received from the dues-paying party organization or as prescribed by the State or National Constitution,' and

"WHEREAS, such instructions may be given by an executive committee made up in whole or part of aliens or alien enemies owing allegiance to governments or organizations inimical to the interests of the United States and the people of the State of New York, and

"WHEREAS, the National Convention of the Socialist Party of America held at St. Louis from about April 7 to about April 14, 1917, did duly adopt resolutions that the only struggle which would justify taking up arms is the class struggle against economic exploitation and political oppression, and particularly warned against the snare and delusion of so-called defensive warfare,' and such resolutions further provided 'as against the false doctrine of national patriotism, we uphold the ideal of international working class solidarity,' and

"WHEREAS, the Socialist Party of America did urge its members to refrain from taking part in any way, shape or manner in the war, and did affirmatively urge them to refuse to engage even in the prosecution of the said war, and did thereby stamp the said party and all its members with an inimical attitude to the best interests of the United States and the State of New York, and

"WHEREAS, the said Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr, and

Charles Solomon, members of the Socialist Party of America, having been elected on the platform of the Socialist Party of America, have thereby subscribed to its principles and its aims and purposes, against the organized government of the United States and the State of New York, and have been actively associated with and connected with an organization convicted of a violation of Espionage Act of the United States;

"Therefore, be it resolved, that the said Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon, members of the Socialist Party, be and they hereby are denied seats in this Assembly, pending the determination of their qualifications and eligibility to their respective seats in this Assembly, and it hereby is referred to the Committee on Judiciary of the Assembly of the State of New York, to be hereafter appointed and that the said Committee be empowered to adopt such rules of procedure as in its judgment it deems proper, and that said Committee be further empowered to subpoena and examine witnesses and documentary evidence, and to report to this body its determinations as to the qualifications and eligibility of the said Louis Waldman, August Claessens, Samuel A. DeWitt, Samuel Orr and Charles Solomon, and each of them respectively to a seat in this Assembly."

Mr. Adler had hardly uttered the last word of this resolution when Speaker Sweet said quickly:

"The question is upon the adoption of the resolution."

Mr. Waldman interrupted with the following question:

"May I inquire whether it is not the rule of this House and the precedent of the State Legislature that when charges are filed against any member of this House, the duly elected member is permitted to repre-

sent his district until the Judiciary Committee renders its decision and renders a report to the Legislature, whereupon the Legislature acts? Has that not been the precedent and is it not the rule?"

The Speaker was again confused for a moment, but recovering, he laid down this novel doctrine:

"In reply, the Constitution provides that the House is the sole judge of the qualifications of its members, and **IT MAY OR MAY NOT GRANT A HEARING.**" But he added magnanimously: "It is the purpose in this case that you shall be given a day in court. The question occurs upon the adoption of the resolution."

But Mr. Waldman insisted: "Mr. Speaker, on a point of parliamentary inquiry, I want to find out if it is possible to move a reference of this resolution to a different committee, other than the one named?"

By this time the Socialist members had begun to feel that their case was about to be "railroaded" without a hearing. The purpose of Mr. Waldman's question was to take the proceedings at this point out of the hands of the Speaker and place it in the hands of the Committee of the Whole House.

The Speaker, denying the well established right of any member to move a re-reference to the House as a whole, said:

"If the resolution is adopted, it carries its own reference. The question is upon the adoption of the resolution; all in favor will say aye, all opposed will signify by saying no. The clerk will call the roll."

The name of the Republican majority leader, Mr. Adler, was called first. He voted "Aye" and the rest of the members followed his course without question or debate.

As the clerk began to call the name of each member, the House relaxed again, the members of the two

older parties conversing and joking among themselves as if in relief that the matter was now settled.

When the name of Mr. Evans, a member from The Bronx, was reached, he interrupted, saying, "I wish to be excused from voting and briefly state my reason."

"Not on a resolution," was the Speaker's prompt reply. "How does the gentlemen vote?"

"I vote no," said Mr. Evans.

The roll call then continued until the name of Mr. Waldman was reached. The latter was silent. The Speaker was forced to ask, "How does Mr. Waldman vote?"

"I refuse to vote," was Mr. Waldman's reply. The other four Socialist members, all of whom preceded Mr. Waldman in alphabetical order, voted no. Mr. McLaughlin, of The Bronx, also voted no.

The result was finally announced: Ayes 140 and Noes 6.

Having been denied all opportunity to discuss this resolution, Mr. Solomon, a member of the Socialist group, rose to a point of personal privilege—a privilege never denied a member of any parliamentary assembly in a case where personal rights are in question.

But the Speaker was firm. He denied this too. He declared: "The gentleman who rises at this time has no privileges on the floor. The gentlemen involved please retire to the back of the rail."

The Socialists refused to leave. A deep silence fell upon the House. All eyes, including those of a throng of visitors, were fixed upon the five accused men. The Speaker then bluntly ordered the Sergeant-at-Arms to escort the Socialists from the chamber. The Socialists again refused to leave, forcing the Sergeant-at-Arms to lead each one in turn to the rear of the chamber.

Whereupon they left the capitol, followed by a throng of newspaper men and curiosity seekers.

As the five men who had thus been subjected to an action unprecedented in the history of American legislative annals walked out, it was curious to observe the change that had taken place in the atmosphere of the Assembly Chamber. As the Socialists passed out of the aisles, the members of the other parties sat in their seats and hung their heads. None of them dared to look at the men who had been denied their seats. A few of them on the Democratic side muttered in an undertone: "Sorry, boys, we couldn't help it."

CHAPTER II

THE COUNTRY'S REACTION TO THE SUSPENSION

The news of the summary unseating of the five Assemblymen for the offense of being Socialists created throughout the country the profoundest sensation of modern political history in the United States.

The newspapers chronicled the event in their largest and blackest headlines. In the East it was the main topic of conversation wherever men gathered—in homes, in hotel lobbies, in clubs, on trains, in labor halls, in the street, and even in the churches. It was recognized that something momentous had occurred in American life—that a climax had been reached in governmental affairs the end of which no one could foresee.

The effect on the country at large was at first difficult to describe. A large portion of the population was apparently bewildered—they did not know what they thought about it. Some persons, still in the grip of the hate psychology created during the world war, contented themselves with saying, "Served 'em right!" Others, without grasping as yet the full import of the Assembly's action, recognized that it contained something sinister and menacing. They felt that "those fellows at Albany have gone too far," but their feelings were undefined. Still others, perceiving the danger, felt that "the Albany crowd had spilled the beans."

But probably the most bewildered persons in the en-

tire country were Speaker Sweet and his advisers at the seat of government in the Empire State. They had firmly believed that their action in turning the Socialists out of their seats and driving them out of the Assembly chamber would be greeted with frantic applause by the whole nation. They had seen other persons in power ride into popularity and gather laurels of public approval by acts aimed at what they were pleased to call "the radical and destructive elements in our society." They fully expected to receive the same meed of praise and ensuing rewards. They had already posed themselves to receive the plaudits of the multitude. They had bared their heads for the crowns of laurel. Their ears were alert to catch the strains of the music which should hail them as saviors of the State and as dauntless heroes who "had showed the way for other states to follow."

Their consternation may be imagined—well concealed though it remained—when instead of receiving garlands of flowers, they were greeted, metaphorically speaking, with a shower of bricks.

The reaction of the country, once it had gained momentum, rushed back over the politicians at Albany with overwhelming force. But that reaction did not come at once. For a few triumphant hours Speaker Sweet and his supporters imagined that they could go even several steps further. It was two days or more before the full force of the storm of indignation broke upon them; and when it did come, they ascribed it merely to the malice or ignorance of a few editors and political commentators.

As soon as the Socialists had been thrown out of the Assembly chamber, the scene of battle was transferred from there to the State Socialist headquarters

where the five suspended men immediately retired for a conference. After a short consultation they issued the following statement:

"We regard our exclusion from the Assembly as organized violence on the very essence of democracy—the sacred right of the ballot. It is a denial of representative government. It is the shameless establishment of an ugly dictatorship—the dictatorship of naked plutocracy.

"The whole procedure is violative of the fundamental law of the land as expressed in the Constitution and the deepest traditions of the nation as voiced in the Declaration of Independence.

"We believe in the accepted methods of the Socialist party—agitation, education and organization on the political and industrial field, and the organization of the workers particularly for the expression of social dissatisfaction through their unions and the ballot box.

"We shall continue to counsel a transformation of society in the direction of industrial democracy, which can be accomplished only when the workers own those things their lives depend upon, and we shall urge our auditors and adherents to act in an orderly and legal manner.

"It is not at all improbable that the action of the Assembly is part of a movement of organized capital, of which the Democratic and Republican parties are the political champions, to discourage the people with the methods afforded by representative government and to provoke them to resort to the methods of violence.

"We shall do all in our power to expose this conspiracy and defeat its purpose.

"While this is a new experience for the five of us, it is not at all new in the history of the fight for social progress in its essential nature. Before and since Bismarck, violence of this nature has been employed with

POLITICS OUST PRINCIPLES



RAGLIN
KIRBY

Courtesy of New York Works

"YOU GIT!"

complete failure, and the recent history of the world especially indicates the result in this case.

"As in the past, the result of such procedure can only be to arouse additional interest in the principles which we represent and stimulate the growth of the great movement to which we have the honor to belong. Its immediate political effect will be altogether favorable.

"We assert that not only was the organic law of the land disregarded in our case, but the rules of the Assembly were distorted to accomplish this lawlessness.

"We summon the American people to save their country from usurpers who would make it into a new Czardom. Eternal vigilance is the price of liberty.

"We have nothing to apologize for, as far as our opinions and convictions are concerned. We are all proud to be members of the Socialist Party."

Having arranged all their affairs at the capital, the five Socialists sought a train for New York City. At the station numerous persons, having heard the news, came up to tell the Assemblymen of their good wishes and of their hopes that the accused men would win their seats back again. Among those who came up to greet the five were a group of workingmen. They were smiling sardonically.

"Well, boys," said one, "do you still believe in political action?"

One of the Assemblymen replied: "Yes, more than ever. A thousand times yes."

Another worker broke in. "What's the use of your political action when they can kick you out whenever they want? We told you when you get strong they won't let you do anything."

Again the reply was: "Don't worry. They are only making propaganda for us. The country won't stand for this."

The workers, unconvinced, shook their heads, but

said, "Well, good luck to you, boys," as the five men started for their train.

At the Grand Central Station, New York, the suspended Assemblymen were met by representatives of the press and of the Socialist Party who escorted them to the county offices of the party in New York City. They were there met by cheering crowds, their reception resembling a jubilee rather than an expression of condolence. A conference was already in progress. There were leading Socialists and party officials from various parts of Greater New York who had gathered impromptu to receive the Assemblymen and to accept the gauge of battle thrown down to them by Speaker Sweet and his associates. This conference resulted in the creation of agencies with full power to join with the five Assemblymen in carrying on the fight to its logical conclusion.

The districts which the five suspended members represented sent committees and groups composed of men from all parties who stated their indignation at what had transpired and pledged their support to their representatives. Mass meetings were arranged in the five districts where demonstrations were held, born out of the indignation caused by the arbitrary proceedings at Albany.

In the cafés and other gathering places in the districts which had been deprived of their representatives, the people said, "Well, it's the old fight—taxation without representation."

The five men addressed their constituents in a statement, which was delivered to every home, as follows:

"You know by this time the story of our exclusion from the Assembly, to which you elected us by an overwhelming vote. It has been told in the press of the city and nation. In fact, it has become a matter

of international interest. With few exceptions, the metropolitan newspapers have condemned the action of the Assembly as a dangerous attack on democratic, representative government and as the disfranchisement of thousands of citizens.

"The brutal Republican majority, aided by the spineless Democratic minority, and dominated by the Bourbon, Speaker Sweet, has taken the position that you have no right to be represented by persons of your own choice. They have lawlessly driven us from the State Legislature where you sent us to fight for the things you need.

"This outrage on the part of the reactionaries and the rubber stamps in our state government has roused all true Americans, all lovers of liberty, all who desire orderly progress and a peaceful solution of the problems that vex us to deep resentment. The cry has gone up for our reinstatement, for representative government, for justice.

"Ever mindful of our responsibilities, of the faith of our constituents in us, of their desires and aspirations, we shall do our utmost to serve them in this crisis as in the past. Whatever course we may decide to follow in these circumstances will be dictated by our purpose to serve you.

"Should it be necessary for us to suffer for our convictions, we shall do so without complaint.

"We are strong in the knowledge that you are with us in this fight, which is the fight for fundamental Americanism. This great responsibility has fallen upon us. We cannot and must not shirk it."

As yet, the non-Socialist public, as far as its views were reflected by the press, seemed to be merely dazed by the occurrence at Albany. The news was received with a feeling more like simple amazement than in-

dignation. The tone of the press was that of neutrality. Of all the New York morning newspapers, only two carried editorials dealing with the suspension. Of these, one was the New York World, a daily of large circulation reflecting the views of the more liberal elements among the Democratic Party. The other was the New York Call, organ of the Socialist Party.

The World dealt with the action of the Assembly under an editorial as follows:

"A LEGISLATIVE OUTRAGE"

"It was after consultation with the Attorney General of the State of New York that Speaker Sweet called the five Socialist Assemblymen before the bar of the House and accused them of having been elected on a 'platform absolutely inimical to the best interests of the State of New York and the United States.' It was upon motion of the Majority Leader that the five men were suspended until their cases can be heard by a committee of the Assembly.

"This is a procedure as extraordinary as it is dangerous. For years the Socialist Party has been recognized in every State of the Union. Its right to vote and to representation has been unquestioned. It has elected Aldermen, Assemblymen, Mayors, Representatives in Congress, and the men so elected have served their terms without hindrance. In New York City alone it has cast 145,000 votes for its candidates for Mayor—nearly three times as many as were received by the nominee of the party which now assumes to read duly-elected members out of the Legislature because their political creed is not to the liking of Mr. Newton, Mr. Sweet and Mr. Adler.

"Not with impunity are entire political parties thus proscribed and deprived of their rights under representative government. This day's work may not mean,

as Assemblyman Solomon predicts, that 'the Socialists will have thirty votes in the next Assembly.' It would not be strange if they should have more than five. And—five or fifty—they will have the right to sit.

"While we are deporting aliens on the ground that they seek to substitute violence for the orderly processes of constitutional government, the New York Assembly excludes regularly elected representatives who are citizens, who are chosen by citizens, and who have strictly followed the constitutional process. What happened at Albany yesterday was a wanton denial of the fundamental principle of representative government. It was in effect Bolshevism masquerading in the livery of Americanism and as gross a violation of the spirit of American institutions as anything the Reds are trying to do."

The New York Call appeared the next morning, January 8, with an epitaph across the top of its first page of eight columns bordered with black and reading as follows:

"DIED

"At Albany, January 7, 1920,
"Representative Government."

Editorially the Call urged Socialist adherents not to be stampeded into violence by the lawless actions of those who pretended to stand for law and order. It went on to say:

"The Socialist party has stood for political action; has stood for the settlement of the industrial problems that press so heavily upon us all by the use of the ballot. In standing for this it has been bitterly criticized by many workers impatient at the abuse of political power by the capitalist class. These workers

have insisted that political power is of no value in securing to the working class industrial justice. They have pointed to the dishonest methods of both the Republicans and Democrats. They have pointed to the terrorism let loose at the polls on election day and at the frauds perpetrated during the count through the control of the election machinery by the political tools of capitalism. The Socialists, while admitting that the politicians of the capitalist class parties have committed all these outrages, have insisted that the only remedy for these conditions was a continuous educational campaign to bring an ever-increasing number of citizens to our point of view. We have insisted in spite of all temptations; in spite of all the aggravated thievery of the political tools of capitalism, that we are going to settle all matters of government by the peaceable means of the ballot.

"And now comes the Legislature of the State of New York as an ally of those who insist that a minority has no chance by peaceable political methods in securing industrial justice. If we belonged to the hysterical group of the community that allows itself to be stampeded by its indignation into playing the sort of a game the lords of misrule are so anxious to have us play, we might fall into the very trap the fused misrepresentatives of the people at Albany have set for us.

"But we refuse to be stampeded. We believe in peaceable political action, because we believe that it will eventually help to achieve the industrial freedom of the workers. It will take more than the panic-stricken action of a lot of politicians temporarily holding office to make us change our position. In one sense the action of the Legislature is a great compliment to the Socialists. Bodies of its character always

become frightened when they see the opening wedge of truth entering.

"We are glad to be able to record that there were two Americans sitting in the Legislature yesterday besides the five Americans suspended by the votes of the traitors to the institutions of this Republic. The names of these two Americans should be set down here for future generations to read. They are Assemblymen McLaughlin and Evans.

"The capitalist class has determined to use every effort to crush the Socialist movement. Socialism is teaching the workers to think for themselves and this spells ruin for the robber class. Every official from the very highest to the very lowest whom it can use to accomplish its purpose is to be used. And in spite of all its power it will fail. For a time it may seem to succeed. But the very persecution it lets loose will eventually destroy the robber system.

"The more the thinking portion of the workers are persecuted the more strongly their organization will be cemented, and the more widely will the truth be spread. And it is only through the spreading of this truth that freedom will be achieved. The first word in the new campaign against the workers was spoken by the speaker of the Assembly yesterday. But the last word will be spoken by the workers."

On the day following suspension, the leaders of the Legislature at Albany, not yet aware of the storm of resentment that was about to break over their heads and exulting over their action of the day before, announced a further step. It was given out that they planned to put through laws preventing all members of the Socialist Party from holding any elective office whatever in New York State.

Meanwhile, public opinion, which first had been

staggered by the news from Albany, had begun to gather itself and take notice. On the morning of January 9, the New York World appeared with a long editorial entitled "A Blow at Free Government." This editorial went on to say:

"The most dreadful blow ever dealt to representative government in the United States was struck by the New York Assembly when five Socialist members were suspended because, as Speaker Sweet said, 'You have been elected on a platform that is absolutely inimical to the best interests of the State of New York and of the United States.'

"That is what every political party says about the political platform of every other party. If the action of the New York Assembly can stand as a precedent, representative government has ceased to exist in this state because all the rights of the minority have been destroyed. No minority party can be represented in the Legislature except on a platform that is satisfactory to the majority party.

"The doctrine that the New York Assembly has enunciated under the leadership of Speaker Sweet is not a doctrine of Republican institutions. It is not a doctrine of Democracy. It is a doctrine of despotism, in violation of every principle upon which representative government rests."

The editorial continued:

"At a time when every patriotic agency is trying to establish that discontent must take its case to the ballot box and that under no circumstances must there be any feeling of force or violence, the New York Assembly autocratically denies the authority of the ballot box. It deliberately seeks to drive discontent to

the use of force and violence. In fact, it says in effect that for people whose party platforms are not approved by the majority there can be no political redress except through revolution.

"Has the Assembly lost all sense, all reason? The thing that has been done is incomprehensible. The rights and liberties of every citizen of New York, no matter what his politics may be, are put in jeopardy when the majority denies to the minority the constitutional processes of free government. It is the duty of every citizen who respects law and order and the guarantees of the constitution to support these five Socialists in the fight they are making for the vindication of a principle without which representative institutions in this state have ceased to exist."

The New York Tribune of January 9 also appeared with a long editorial in which it seemingly upheld the novel doctrine enunciated by Speaker Sweet that the unseated men were presumed to be guilty until they prove themselves innocent. In this editorial the Tribune, instead of putting it up to the Assembly to prove the guilt of the accused Socialists, simply said, "To prove innocence, they should be given full opportunity."

However, other newspapers throughout the country condemned the Assembly's action unhesitatingly. The New York Evening Post declared that the Assembly "has arrogated the right to interpret a statement of principles into an attack against the public welfare, and it has made all subscribers to these principles ipso facto violators of the law."

The New York Globe stated that "If an expulsion of these men is railroaded through and their defeated opponents in the last election are seated in their place, more harm will be done to the theory of liberty under

law, and the principle of Democratic government than has been done in generations." The *Globe* editorial went on to ridicule the charge against the Socialists that they believed in violence, saying: "The very fact that the Socialists seek a franchise shows that they accept the democratic form laid down in the Constitution. It shows that the members in the past in the Legislature have done nothing whatever revolutionary. On the contrary, the impartial testimony of a non-Socialist investigation declared that they stood head and shoulders above their Democratic and Republican opponents."

The *Brooklyn Standard-Union*, a leading Republican paper, called "the action of the Assembly in suspending the five Socialists utterly wrong in principle and lamentable as a matter of policy. The ground of their suspension is their election on the platform of a party that is opposed to the organized government of the nation and state and that they are connected with an organization convicted of the violation of the Espionage law of the United States. This is ridiculous. The Socialist members have neither been convicted of crime nor even indicted for crime."

Comments opposing the action of the Assembly were by no means confined to Democratic papers, but appeared even in the most conservative Republican organs. For example, the *Pittsburgh Leader* remarked that:

"Perhaps the next time the favorite Southern pastime of lynching negroes is condemned, the advocates of lynch law may ask Northern critics to give consideration to the mob tactics of the New York Legislature yesterday in depriving five members of that party of their seats and legal rights. If the Southerners ask for fair comparison between the degree of lawlessness in their acts, often in the heat of

anger and in the presence of an atrocious crime, and that of the New York law makers, they will impose a severe contrast upon us. The five members unseated, so far as mob action can affect the purpose, are Socialists, and that is offered as the only reason and the insufficient excuse for the lynching. More harm has been inflicted upon the principles of political freedom and popular self-government, the American ideals, by the New York Legislature than all the blatant mouthings of the reddest of Reds."

The Indianapolis Star, apparently resenting the prominence that might be given to Socialists, said, "It may be irritating to see Socialists sent to the Legislature as such but summary ejection scarcely is the way to deal with the problems that they present."

CHAPTER III

THE TIDE OF PROTEST RISES

Within forty-eight hours after the unseating of the Socialists, it was apparent that both of the old political organizations had been thrown into confusion. Protests arose from every section of the country. The Democratic party sought to disclaim responsibility, although its members in the Assembly had voted for suspension. Even in the ranks of the Republican party there were men who complained that they voted without knowing what they were doing, asserting that the resolution was sprung upon them, that debate was denied, and that they had no opportunity to grasp the import of their vote.

Charles Evans Hughes, former Governor of the State of New York, ex-Justice of the United States Supreme Court, and candidate for the Presidency against Woodrow Wilson, sent a letter to Speaker Sweet rebuking his stand. This was a bombshell in the enemy's camp. It created consternation among those reactionary politicians who had always regarded ex-Justice Hughes as "regular." It had the effect of adding fuel to the flare of public indignation. Mr. Hughes' letter follows:

January 9, 1920. ✓

"Hon. Thaddeus C. Sweet, Speaker of the Assembly,
Albany, N. Y.

"My dear Mr. Speaker:

"I deeply regret the action of the Assembly in suspending five members of the Socialist Party who have been duly elected. I think that you will agree that the high prerogative of the Assembly to pass upon the qualifications of its own members should be exer-

cised in accordance with the spirit of our institutions.

"It is not, as I view it, in accordance with the spirit of our institutions, but on the contrary, it is absolutely opposed to the fundamental principles of our Government for a majority to undertake to deny representation to a minority through its representatives elected by ballots lawfully cast.

"If there was anything against these men as individuals, if they were deemed to be guilty of criminal offenses, they should have been charged accordingly.

"But I understand that the action is not directed against these five elected members as individuals, but that the proceeding is virtually an attempt to indict a political party and to deny it representation in the Legislature. That is not, in my judgment, American government.

"I understand that it is said that the Socialists constitute a combination to overthrow the Government. The answer is plain. If public officers or private citizens have any evidence that any individuals, or group of individuals, are plotting revolution, and seeking by violent measures to change our government, let the evidence be laid before the proper authorities and swift action be taken for the protection of the community.

"Let every resource of inquiry, of pursuit, of prosecution, be employed to ferret out and punish the guilty according to our laws. But I count it a most serious mistake to proceed not against individuals charged with violation of law but against masses of our citizens combined for political action, by denying them the only resource of peaceful government—that is, action by the ballot box and through duly elected representatives in legislative bodies.

"The issue to my mind is very clear. I speak as one utterly opposed to Socialism and in entire sym-

pathy with every effort to put down violence and crime. But it is because I am solicitous to maintain the peaceful processes essential to democracy that I am anxious to see Socialists as well as Republicans and Democrats enjoy their political rights.

"Are Socialists, unconvicted of crime, to be denied the ballot? If Socialists are permitted to vote, are they not permitted to vote for their own candidates? If their candidates are elected and are men against whom as individuals, charges of disqualifying offenses cannot be laid, are they not entitled to their seats?

"What, may I add, is it supposed these Socialists will do in the Legislature? As members they may introduce bills, they may oppose bills, they may debate them. In all matters they are subject to the rules of the Assembly. Why should these privileges be denied to representatives of the Socialist Party? Is it not clear that the Government cannot be saved at the cost of its own principles?

"If the Socialists were denied recourse, through their duly elected representatives, to the orderly processes of government, what resort is there left to them? Is it proposed to drive the Socialists to revolution by denying them participation in the means we have provided for orderly discussion of proposed changes in our laws?

"Nothing in my judgment, is a more serious mistake at this critical time than to deprive Socialists or radicals of their opportunities for peaceful discussion and thus to convince them that the Reds are right and that violence and revolution are the only available means at their command.

"I appreciate deeply your high sense of responsibility and your anxiety faithfully to serve the people of the State. I am constrained to write in this way because of the seriousness of the issue. I sincerely

hope that the Assembly will take swift action to avoid a permanent grievance on the part of those who are threatened with virtual disfranchisement. I have sufficient confidence in our institutions to believe that they will survive all the onslaughts of discussion and political controversy. But Democracy cannot be preserved if representation is denied. Apart from the matter of principle, the procedure is futile. To shut out the duly elected representatives of the Socialists is merely to multiply Socialists by the thousand.

"Instead of protecting us from revolution, it will do more to encourage the spirit of revolution and to strengthen the advocates of violence than any conceivable propaganda could accomplish.

"I remain, with high respect,

"Very sincerely yours,

"CHARLES E. HUGHES."

The day following, Speaker Sweet made a reply, which attempted to deny that he had intended an attack on a political party but instead merely meant to question the personal fitness of its members. His letter follows:

"Hon. Charles E. Hughes,

"My dear Judge Hughes:

"I notice in to-day's columns of the press that you communicated to me your views upon the action of the Assembly in the adoption of the resolution suspending the right of the five Socialists to seats in that body, pending an investigation of the charges that they are unfit to occupy a seat in the Assembly of the State of New York. It seems from your communication that you have assumed that the action of the Assembly was in the nature of expulsion. If you read carefully and were familiar with the language of the

resolution adopted, you would see that the resolution provides as follows: 'Therefore, be it resolved, that the said (naming the five Socialist members) be denied seats in this Assembly pending the determination of their qualifications and eligibility to their respective seats.'

"You should bear clearly in mind that no attack is made upon the views of the Assemblymen-elect in question, however opposed they may be in theory to the institutions of the United States and in this State. The question presented squarely, is whether the different organizations of which they are members and which they seek to represent in the Legislature, advocate methods and employ tactics to bring about the overturn of our form of Government which will justify their exclusion from participating in legislative proceedings.

"The evidence respecting the Socialist Party of America and other organizations to which they belong and the conduct of the five Assemblymen-elect as members thereof, will be presented before the Judiciary Committee and will there be impartially judged with a view to determine the rights and fitness of those individuals to take their seats, and in this connection, it might be well to call your attention to this outstanding fact, that a sharp line of demarcation was drawn in April, 1917, between Socialism and the Socialist Party of America—those Socialists who placed the honor of their country above their creed resigned from the Socialist Party of America and have done their utmost to point out that the Socialist Party of America as at present constituted is un-American, is allied with forces of Soviet Russia in an attempt to institute in this country a new form of government and a dictatorship of the proletariat.

"To quote from your letter, you stated: 'If the pub-

lic officers or private citizens have any evidence that any individual or group of individuals are plotting revolution and seeking by violent measures to change our Government, let the evidence be laid before the proper authorities.'

"Is not the Judiciary Committee of the Assembly the proper tribunal to investigate the fitness of those who seek seats in the Assembly as the rules of that body provide, and is not the Assembly in itself the proper tribunal to determine the question of fitness of these five men? The Constitution of this State so provides.

"I believe it is my duty, as it is that of every patriotic citizen, to withhold judgment until findings of fact are presented and a fair determination had.

"I must further emphasize that I believe that a criticism of the Assembly's action without full knowledge of the facts in the case, of necessity gives aid and comfort to those elements of our society which seek the destruction of our institutions."

Speaker Sweet thus showed signs of weakening. His plea against being prejudged was in strong contrast to his powerful attitude on January 7, when he demanded that the five Socialists be suspended "with or without a hearing."

To add to the confusion existing in the ranks of the opposition, the Socialists now made public a privileged resolution they had intended to introduce in the Assembly on January 7, when under the rules, such a resolution could have been offered. This resolution was of international import. Having been prevented from introducing it because of their suspension, they issued it to the press, which published it throughout the country. The resolution was as follows:

AFTER ALL THE YEARS



Courtesy of N. Y. Evening Journal

CAN THIS RIGHT BE ALIENATED?

"Be it resolved by the Assembly of the State of New York that we request the following information from the legislative committee currently known as the Lusk Committee.

"1. Is it true that on June 12, 1919, the committee, through its direct wire and over the switchboard of the Prince George Hotel, New York City, called up Bowling Green 9696, which is the 'phone number of the British Military Attaché, Col. Thwaites, and spoke to R. N. Nathan, arranging for a raid on the Soviet Bureau in New York City?

"2. Is it true that R. N. Nathan is the Chief of the British Secret Service in this country?

"3. Is it true that the raid on the Soviet Bureau was executed on the following day, June 13, in accordance with arrangements made between the committee and the Chief of the British Secret Service, Mr. Nathan?

"4. Is it true that the papers obtained in the raid were removed to the office of a private detective at No. 30 East 42d Street?

"5. Is it true that Mr. Nathan joined the raiding party in the office of the private detective and in the presence of representatives of the committee, including its associate counsel, Archibald E. Stevenson, took original copies of these papers and carried them away with him?

"6. Is it true that these papers were never returned to the committee?

"7. (a) Is it true that the remaining papers were turned over to the firm of Oliver Lippincott & Co., photostaters at No. 230 Broadway, New York City, where about 3,500 copies of duplicates were ordered to be made?

"(b) Is it true that in the month of August, 1919,

a package of these photostats were delivered to Mr. Nathan at the Hotel Biltmore, New York City?

"(c) Is it true that the bill for these photostats, approximating \$1,200, was paid in two installments, one with a check drawn by the committee on the Hariman National Bank for \$600, and the other some time later with \$600 in cash?

"(d) And is it true that prior to the cash payment to Oliver Lippincott & Co., Mr. Nathan handed a roll of bills to the Sergeant-at-Arms of the committee?

"8. Is it true that Mr. Nathan also participated in the raid on the Rand School?

"9. Is it true that shortly after the aforementioned incidents Mr. Nathan, in full possession of the original papers and photostats, left the United States for England?

"10. Is it true that the original papers obtained by Mr. Nathan were of great commercial importance to the United States and that his possession of them enabled his Government to obtain commercial and diplomatic advantages in its relations with the Soviet Government of Russia?"

The committee referred to here was the committee appointed by the Legislature in March, 1919, to "investigate the scope, tendencies, and ramifications of sedition activities (on the part of 'a large number of persons within the State of New York'), and to report the result of this investigation to the Legislature."

This body took its name from its chairman, Senator Clayton R. Lusk, of Cortland, N. Y., and thereafter became known as the Lusk Committee. It came into existence upon the motion of a private organization, the Union League Club of New York City, and was dominated by its associate counsel, Archibald Ewing Stevenson, a member of and a representative of the

club. This organization is known as the political club of Wall Street.

The activities of the Lusk Committee were excellently characterized by Samuel Untermyer, a prominent attorney of New York City and conspicuous in political life, in a letter to Senator Lusk as "incredibly unlawful and despotic." It became generally known as a "witch-hunting" committee. In the same letter, Mr. Untermyer declared that he was "further informed that at one time your star-chamber proceedings went to the extent not only of excluding the public, but that you have at times heretofore even barred newspaper men from your sessions, and that at the end of each day of the so-called 'hearing,' typewritten statements of your version of supposed 'testimony' and the slurring remarks of counsel and yourself against people who are absent and are given no opportunity to be heard, were distributed for publication."

The press demanded from Senator Lusk an explanation of the questions asked by the Socialist Assemblymen. His answer follows:

"No one outside of members, counsel and agents of the committee and State and local officials has had anything to do with the so-called raids on the Soviet Bureau or any other organization. No papers seized have been received by any one other than agents of the committee.

"Any papers seized at the Soviet Bureau were brought in evidence before the committee in public hearings; photographs of some of these have been published in newspapers. I DO NOT KNOW FOR WHAT PURPOSE THEY HAVE BEEN USED OR WHETHER COPIES HAVE BEEN SENT TO ENGLAND.

"R. N. Nathan (said to be British Secret Service

Chief in the United States) never had any more information, to my knowledge, than did the newspaper reporters and the public generally. There were no papers of commercial importance to any one. The pretended commercial activity of the Soviet Bureau was a blind for distributing letters from Lenin to American workingmen and the distribution of other propaganda directed against the Government.

"The Sergeant-at-Arms of the Committee is the Sergeant-at-Arms of the Senate. He has never, to my knowledge, received money from any source except the State of New York.

"The Lusk Committee is not responsible for the action of the Assembly. The Speaker of the Assembly is a member of the committee and has knowledge of the evidence against these members.

"The issue is clean-cut. If these men believe in, and are working to bring about, the overthrow of the Government by force and violence, they will undoubtedly be denied their seats. If not, they will be permitted to serve.

"These charges against the committee are made by them with the full knowledge of their falsity and solely for distracting the attention of the public from the issue, which is simply whether they personally are advocating and attempting the overthrow of our Government by violence and revolution. They should be held to this issue and given a fair trial."

The five Socialists promptly replied to Senator Lusk's statement, characterizing it as "evasive, non-committal and contradictory." His denial that, to his knowledge, foreign agents or any other outside representatives had anything to do with the raids on the Soviet Bureau or any other organization does not explain why on June 12, 1919, the day before the raid

on the Soviet Bureau, Bowling Green 9696 was called, which 'phone number is that of Col. Thwaites, British Military Attaché. After calling the attention to the Senator's evasive reply, the suspended men referred to their resolution as follows:

"We meant to present this information and these questions in the State Legislature. We were barred. But the fact that we were barred will not deter us from telling the truth to the people."

As one day succeeded another, the tide of protest against the action of the Assembly instead of receding, grew in volume as the meaning of the suspension became clear to the people. Public men and organized bodies of various beliefs joined in the outburst of protest. The voice of the press waxed louder as the realization grew stronger that to permit this action to stand would be to submit to an attack upon fundamental American liberties. A typical editorial protest of this nature was that contained in the New York Evening Journal, which commented as follows:

"The suspension of the five Socialist members of the Legislature is the most serious assault upon the liberties of the American people that has been made since a British King and Parliament forced our fathers to protect their freedom with arms in their hands.

"Not all the anarchists in the country multiplied by ten could strike such a deadly blow at law and order.

"Not all the anarchists from Herr Most's day down to this present hour ever did strike such a deadly blow at our system of free representative government.

"We do not belong to the Socialist Party. We are not in the least convinced that its theory of government is as good as the theory of government expound-

ed in the Constitution of the United States. But just because we do believe in the theory of government expounded in the Constitution of the United States, we emphatically protest against the suspension and the intended expulsion of the five Socialist representatives in the State Legislature.

"It is a high-handed act of tyranny, a criminal assault upon public liberty, a treasonable defiance of the Constitution and flat rebellion against the written laws and the inherent sovereignty of the people.

"This treason of the majority in the Legislature must be fought with every lawful weapon that a patriotic press and patriotic citizenry can find to use.

"We should think that any man with an ounce of common sense could see that the denial of representation to citizens who choose representatives inimical to a majority in Legislature—or in the Federal Congress—is destructive of all liberties, destructive of all guarantees, destructive of **ALL FREE GOVERNMENT**, and destructive of that confidence in the protection and authority of the Constitution and the laws upon which free government alone securely rests.

"The men who have committed this assault upon the rights of the five Socialist members, and upon the rights of the people who elected these five representatives, are either conscious traitors to their oaths to obey and defend the Constitution and the laws, or else they are fools who are not mentally capable of understanding their own imbecile folly.

"It is impossible for free government to exist without representative freedom, without the safety and inviolability of each and every representative's right to represent the group of citizens which elects him.

"That is fundamental. There is no argument about it.

"Whenever the right of representation is destroyed,

the people no longer rule themselves. They are ruled by masters. They are **SUBJECTS**, not citizens.

"And we Americans do not intend to be subjects.

"We do not intend to call any man or any men master.

"Not while our fathers' blood runs in our veins.

* * * * *

"We Americans must make a stand, once and for all, against the daily increasing encroachments upon our rights, and our liberties, and our form of free Government. The hour is come when these official tyrants of our own creation must be made to recognize the limitations of their authority; must be made to realize that this is the Republic of the United States and not a hunting preserve for plunderbunds, autocrats, bureaucrats and secret police spies.

"As a result of the war, there is a powerful and very dangerous conspiracy to overthrow democracy everywhere in the world.

"The agents of this conspiracy are at work here in America precisely as they are at work in Europe and in our neighboring countries on this continent.

"They are in our Congress, in our Legislatures, in our newspaper and periodical offices, in our pulpits, in our schools. And everywhere they are making a simultaneous assault upon free speech, free press, free assembly, free representation.

"Everywhere they advocate repressive legislation to curb the right of opinion and discussion, and everywhere they incite and applaud mob violence against men and journals that speak out for the rights and interests of the plain people.

* * * * *

"The issue at stake is not the rights of these five men.

"The issue at stake is the right of free representa-

tion—the right of all of us to choose our representatives.

“To deny this right is treason against the Constitution, treason against the State of New York, treason against the Republic, treason against the fundamental, inherent liberties of the American people.

“The man who submits to such tyranny and such treason without protest and resistance is not fit to call himself an American.

“We should hold ourselves no better than mean and cowardly traitors to every obligation of an American journal if we did not denounce and resist this assault upon the common rights and common liberties of the land and its people.”

Expressions of astonishment and indignation emanated from all parts of the world. Public men in England, France, Italy, and even as far off as the Argentine Republic, added their protest to the storm which was rapidly attaining its climax. For example, a dispatch from Rome, Italy, dated January 9, said that the “Italian press without distinction of parties, condemned such a reactionary measure as tending to strangle freedom of thought in a country which has hitherto boasted of its free institutions of liberty and democracy.”

While the Socialists were organizing their legal talent for purposes of defense, the most powerful organization of lawyers in the country, the Bar Association of the City of New York, took up the cudgels in behalf of the unseated Socialists.

On the evening of January 13 it held a meeting in which one of the longest and bitterest debates in its history took place. The discussion lasted until the early morning. A resolution denouncing the suspension as contrary to the spirit of representative govern-

ment and calling for a committee of Bar Association members to assist in the defence of the suspended men was introduced by Charles Evans Hughes and seconded by George Gordon Battle, a lawyer prominent in Democratic politics in New York City. The opposition was led by William G. Guthrie, a prominent Republican, a corporation lawyer, and chairman of the Committee on Political Reform of the Union League Club.

The resolution was finally adopted by a vote of 174 to 117. It read:

"WHEREAS, this association regards with a deep sense of anxiety the action of the Assembly of this State in suspending from its membership the five members of the Socialist Party who were duly elected members of the Assembly at the last election, and

"WHEREAS, any attempt by a majority to exclude from the Legislature those who have been duly elected to its membership, merely because of their affiliation with a political party, when seeking by constitutional and legal methods to bring about any change in our Constitution and laws, is un-American, and, if successful, must destroy the rights of minorities and the very foundations of representative government, and

"WHEREAS, the five members of the Socialist Party now suspended from membership are charged to be unfit for membership in the Legislature because of their membership in the Socialist Party, and NOT BECAUSE OF ANY PERSONAL UNFITNESS, it is hereby

"RESOLVED, that this association is unalterably opposed to any action of the Assembly excluding from its membership because of affiliation with any political party, when seeking by constitutional and legal methods to bring about any change in our Constitution and

laws, any person duly elected to its membership; and it is further

"RESOLVED, that the president of the association appoint a special committee who shall appear before the Assembly or its Judiciary Committee and take such action as may in their judgment be necessary to safeguard and protect the principles of representative government which are involved in the proceedings now pending."

John G. Milburn, president of the Bar Association, then appointed the following special committee to go to Albany and take a hand in the legal fight: Charles E. Hughes, Morgan J. O'Brien, former Judge of the Supreme Court of the State of New York; Joseph M. Proskauer, Louis Marshall, and Ogden L. Mills.

Speculation immediately became rife as to what the status of the Bar Association's committee would be when it presented itself at Albany. Speaker Sweet and his associates immediately began scheming the adoption of rules by which the distinguished jurists might be prevented from appearing in behalf of the Socialists. When approached on this question by a newspaper correspondent, he made the following comment:

"I hope you will quote me correctly," he said, "in stating that this will be an absolutely fair trial and that the people of the State will have put before them all the evidence and will not have to depend upon biased accounts by certain parts of the press."

He announced at the same time that steps would be taken to send out "official information" which would keep the people of the State informed as to the "true

nature of the evidence" and to prevent the public from being "misled by the press."

The Speaker's constant reiteration of the assertion that the unseated Socialists would receive a "fair trial" seemed to arouse the suspicion of the press and fears that the contrary would be the fact, judging by the proceedings theretofore. Several newspapers resented the insinuation of Speaker Sweet that they had suddenly become converted to Socialism and ridiculed the charge that they could not be relied upon to give accurate accounts of the trial.

Meantime representatives of various liberal, radical and labor bodies had assembled for the purpose of organizing on the basis of the right of all organizations to be represented in governmental bodies, no matter how radical or sweeping the changes they might seek to accomplish.

At a conference consisting of three hundred delegates, representing organized labor, the Socialist Party, the "Committee of Forty-Eight" and the Labor Party, it was decided to call a State-wide conference. When this conference was later held at Albany, more than four hundred delegates were present. Representatives of organized labor pledged themselves to bring about the defeat of all persons who were responsible for the unseating of the five Socialists.

While all this was going on, there were evidences of dismay among certain elements in the Assembly, chiefly on the Democratic side. Numerous Assemblymen, disconcerted by the volume of protest, began to experience an uneasy feeling that the expulsion proceedings had not been carefully conducted.

This feeling came to a head on the night of January 12, when Charles E. Donohue, the Democratic floor leader, made a motion to rescind the vote by which the charges against the Socialists had been

adopted. Mr. Donohue first presented a resolution designed to reseat the Socialists and to allow them a voice in deliberations pending their trial. This was promptly ruled out of order by Speaker Sweet, who then remarked, "I would be glad to entertain a motion to rescind the action of last week." Never did Speaker Sweet seem more sure of his power. He quickly ordered a roll call. No member was allowed to comment on his vote.

When the tally was taken, it was found that 33 members had voted to reinstate the Socialists, whereas 71 members were still against it. This compared with an original vote to suspend of 140 to 6. At that time, only two non-Socialists had voted "no," so that 31 members, since the taking of the original vote, seemed to have become afflicted with a case of "cold feet." Afterwards, it was found that 41 members of the lower House, mostly Republicans, apparently not caring to go on record, had remained away from the Chamber.

Speaker Sweet's next move was to announce the personnel of the Judiciary Committee which was to try the suspended Socialists. They were: Louis M. Martin of Oneida; Rowe of Erie; Lown of Yates; Jenks of Broome; Everett of St. Lawrence; Pellett of New York; Wilson of Westchester; Bloch of New York; Harrington of Clinton; Blodgett of Schenectady; Stitt of Kings; Cuvillier of New York; and Evans of The Bronx.

The trial was set for January 20, 1920, thirteen days after the suspension. The Socialists made vigorous protest against the delay, five Assembly Districts in the City of New York meantime having been left unrepresented. On this account they declared they had a right to demand immediate trial. They further contended that the Assembly had no constitutional right to do business, because it could not properly be con-

stituted since it had performed a coup d'état by arbitrarily suspending five members of a minority party.

On January 15 the Sergeant-at-Arms of the Assembly officially served each of the five suspended members with a copy of the charges and a notice of trial. This typewritten notice, signed by Louis M. Martin, Chairman of the Judiciary Committee, read as follows:

"Sir: Please take notice that in pursuance of the resolutions adopted by the Assembly of the State of New York on January 7, 1920, a certified copy of which you are herewith served, the Judiciary Committee of the Assembly of the State of New York, will begin investigation of your qualifications and eligibility to a seat in the Assembly of the State of New York, for the session of 1920 in the Assembly chamber, Capitol Building, Albany, N. Y., on January 20, 1920, at 11 A.M.

Upon receipt of this notice, the five Socialists issued a statement of protest as follows:

"Speaker Sweet has changed his mind again. After our forcible ejection from the chamber, the Speaker had given the people to understand that specific charges would be made against each of us to 'determine' our qualifications and fitness to be members of the Assembly. This morning Sergeant-at-Arms Haines served us with a copy of the charges containing generalizations and inferences.

"It is an exact copy of the resolution originally passed. A criminal before the bar is at least permitted to know what he is charged with. We are not afforded even this right. We are as much in the dark to-day against what we must defend ourselves as we

were when the precipitant action of the Speaker was sprung upon us Monday a week ago.

"We demand specific charges, stating specific offenses."

About this time, Morris Hillquit, who had been absent from public affairs for more than a year recovering from a serious illness, arrived in New York City to take charge of the defense.

The thirteen days which elapsed between the act of suspension and the opening of the trial now drew to a close. They had been thirteen days of intense excitement. In these thirteen days, Socialism and the Socialist Party had attracted more widespread public attention than in the thirteen years preceding. They were thirteen days of awakening. In these thirteen days, America once more took thought as to its liberties, which have been forgotten in recent years. A great struggle was about to take place. The eyes of the entire country, of the world, in fact, were fixed upon Albany. The Socialists felt pride in being thrust into a position in which they appeared as defenders of American constitutional government. The struggle of classes was about to be transformed into one of the greatest political trials in modern history.

CHAPTER IV

THE OPENING OF THE TRIAL

The trial which was to determine whether representative Government should survive in the United States was opened in the Assembly Chamber at Albany on January 20, 1920.

The House was crowded with members, senators, judges, officials, and visitors coming from all parts of the State. As eleven o'clock, the hour set for the opening of the trial, drew near, a sense of excitement pervaded the whole city.

In the Chamber, the Judiciary Committee, composed of thirteen members, of which Louis N. Martin was chairman, sat in the first semicircular row of chairs, near the Speaker's chair. On the left, sat the accused Socialists with their counsel. On the right sat the State's Attorney General, Charles D. Newton, with his staff of legal advisers.

Special arrangements had been made for the press. Representatives from the daily newspapers of New York and other cities and states sat in the two rows of seats immediately back of the Judiciary Committee.

Amid intense silence, Chairman Martin made his opening statement as follows:

"The proceeding which is brought here to-day will not be conducted along the lines of a general committee hearing. It is in the nature of an investigation as to the qualifications of certain members of the Assembly of the State of New York, to sit as members of that body, and under the rules, or one of the rules

adopted by the Committee, it was stated that the rules and procedure of the Supreme Court of the State of New York would prevail.

He then insisted that the rules would be strictly obeyed and that no applause would be permitted.

After the preliminaries had been disposed of, ex-Governor Hughes arose from a seat in the middle of the chamber. With great dignity, and speaking very slowly and clearly, he said:

"I crave the courtesy of the Judiciary Committee to submit a brief statement on behalf of the Association of the Bar of the City of New York, which is represented here by a special committee composed of Judge O'Brien, Senator Mills, Mr. Marshall, Mr. Proskauer, and myself. In asking the courtesy of the Committee to make a brief statement, I desire to say that this special committee does not appear on behalf of the members of the Assembly under suspension, nor on behalf of the Socialist Party, but solely on behalf of the Association of the Bar; and in the public interest we desire, if we may, at the threshold of the proceedings of this Judiciary Committee to suggest to the Committee the gravity of the matter before them and the importance of determining at the outset the application of certain fundamental principles and of formulating their course of inquiry in such a manner as to satisfy those principles of constitutional law and procedure. We have a concrete suggestion to make to the Committee, and it is our sole desire that this very important matter, the determination of which is so closely related to the security of the Republic, should be dealt with in a manner that will commend the action of the Committee and the Assembly to the judgment of the people of the State whose interests are here involved."

At this point, the Chair interrupted by asking that

Mr. Hughes suspend his statements until the personnel of counsel for both sides had been duly noted. Turning to the attorney-general, he asked that the latter announce the names of counsel for the prosecution. Mr. Newton then named John B. Stanchfield, Martin W. Littleton, Henry F. Wolf, Archibald E. Stevenson, Samuel A. Berger, and Elon R. Brown. Later ex-Attorney-General Carmody, Arthur E. Sutherland, former Justice of the State Supreme Court; and Mr. Martin Conboy were added to the array of prosecuting counsel.

Turning then to the left, the chairman asked that the accused Assemblymen name their counsel. Mr. Hillquit, replying for the Socialists, named himself, Seymour Stedman, Gilbert E. Roe, S. John Block, Walter Nelles, and William Karlin.

To the query of the chairman as to whether there were any other appearances, ex-Justice Hughes arose and said, "I desire, if this is the proper time, to note appearance of the Committee requested to appear as provided by the practice of the Supreme Court of the State of New York, which I understand you have said the Committee is to follow."

The chairman interrupted to ask, "Do I understand, Governor Hughes, you desire to appear not for the Assemblymen whose conduct is in process of investigation? You do not appear for them?"

Mr. Hughes's prompt reply was, "Not at all."

The chairman then inquired: "Do you desire to have your appearances noted for the Bar Association?"

Mr. Hughes replied that he did, "for the purpose of making such suggestions and representations to the Committee as in our judgment may be deemed important in order that the proceeding may be heard and determined in accordance with sound constitutional prac-

tice, and we hope that what we may do may be an aid to the deliberations of the Committee."

But the Judiciary Committee's Chairman apparently did not desire any light to be thrown on these questions, either by ex-Governor Hughes or by his fellow-members of the Bar Association. Apparently Mr. Martin considered that the public had no right to have representatives on the floor of the Chamber during the trial, for he said to Mr. Hughes:

"We trust you will appreciate the position that we are in when we state that we cannot consent to allow appearances on the part of any organization in the State, outside of the real parties who are the subject of this inquiry."

After paying flattering compliments to Justice Hughes and his fellow-lawyers, Mr. Martin explained:

"This committee is not concerned with the temporary suspension of these gentlemen. At the time these gentlemen were suspended from the House, this committee was not in existence. We were created after that rule or resolution was adopted and this matter was referred to us and we have accepted it with very grave reluctance. The duty that is imposed on us and our committee is this: To determine from the evidence as to the qualification and eligibility of these gentlemen and report to the House.

"Now, we haven't any concern. We haven't any power to pass on the question or take up the question as to whether it was proper to suspend these gentlemen or not. That is the action of the Assembly itself. It seems to me that if a memorial is to be addressed by your committee to the Assembly of the State of New York, it should be addressed by your committee to the Speaker of the Assembly or through some member of the Assembly to the Assembly itself at its session, and that it is not a proper matter to be brought before this

committee under the very limited scope that we have, and under the very limited power that is given us."

However, Mr. Hughes held his ground. Interrupting Mr. Martin, he said:

"I appreciate duly the fact that the Committee is the judge of its own procedure, and I would pray the leave of the Committee to submit a statement for the consideration of the Committee which the special committee that I have the honor to represent has prepared—and that statement concludes with a suggestion to the Committee in a very few words that is pertinent to the authority that that Committee possesses, as we believe, in accordance with precedent. I understand that all committees having to deal with matters of this sort in Congress or with the Legislature of this State, have generally considered proper procedure and have made report generally upon the principles and practice involved; and I suggest that this statement which we submit but which, in view of your disposition of the matter, I will not undertake to read or state orally, but I ask to state the conclusion of the statement, the suggestion of this special committee, to the effect that the Judiciary Committee at once report to the Assembly that there is no question properly before the Judiciary Committee of any disqualification on the part of these members; that no charges against these members of any constitutional disqualification or of any misconduct in office or of any violation of law on their part have been properly laid; that the members under suspension should at once be restored to the privileges of their seats, and that if it is desirous to present any charges against them of any violation of law, such charges should be properly formulated, and that until such charges, properly laid, have been established by proof after due opportunity to be heard, these members shall enjoy all

the privileges of their seats in recognition of their own rights and of the rights of their constituencies.

"In support of that, we submit this statement and the accompanying brief for consideration of the Committee."

This brief, which the page boys began to distribute, was as follows:

STATEMENT BY THE SPECIAL COMMITTEE
APPOINTED BY THE ASSOCIATION OF
THE BAR OF THE CITY OF NEW YORK:

"We appear as a Special Committee appointed pursuant to resolution adopted by the Association of the Bar of the City of New York at its annual meeting held on January 13, 1920.

"We do not represent the members under suspension, or the Socialist Party, and we have no sympathy with the aims of that party. We appear solely as the representatives of the Association of the Bar, and in the public interest, to place before your Committee considerations which we deem to be of fundamental importance in this proceeding.

"In view of the gravity of the questions involved, and the serious consequences which may follow any deflection from sound constitutional practice, we respectfully suggest that the committee at once consider the present status of this proceeding and the immediate measures which are required in the light of the constitutional rights of these suspended members and of the constituencies which they have been elected to represent.

"We believe that the following facts are undisputed:

"1. That the members under suspension were duly elected to the Assembly.

"2. That when these members appeared with their

credentials, they were admitted to take the oath of office and that they severally took such oath and were admitted to the privileges of the House.

"3. That having taken the oath and having been admitted to all the privileges of members of the Assembly, they participated in the election of the Speaker and otherwise acted as members until their suspension.

"4. That, after having taken the oath and having been admitted as members of the Assembly, they were suspended and denied the privileges of their seats without a hearing or opportunity to be heard.

"5. That, prior to said suspension, there was no charge against these members, and there is no charge pending against them that they were not duly elected, or that they do not possess the qualifications prescribed by the Constitution, or that they are not of sound mind, or that they have not taken the constitutional oath of office, or that they have been convicted of any crime, or that they have committed any overt act constituting a criminal offense, or that they have been guilty of any violation of law, or that they have been guilty of any misconduct while members of this Assembly.

"6. That by reason of their suspension, these members have been denied all the privileges of their seats.

"7. That by reason of the suspension of these members, there are five districts of the State now in effect without representation in the Assembly, that there are no vacancies that can be filled by election or otherwise, and that this denial of representation will continue as long as this inquiry lasts, which may be until the end of the legislative session.

"We submit the following propositions as abundantly supported by reason and precedent:

"First, that the power of the Assembly under the

Constitution to be the judges of the qualifications of its own members is not an arbitrary power, but is to be exercised as a prerogative in accord with the fundamental conceptions of due process and the essential principles of representative government.

"Second, that all questions as to the existence of disqualification in the case of a member-elect are properly presented before he is admitted to membership in the Assembly.

"Third, that after the oath has been administered to the member, and he has been admitted to the privileges of the House, he cannot be deprived of those privileges except by expulsion.

"Fourth, that a member cannot be expelled except upon proper charges and after due opportunity to be heard.

"Fifth, that after he has taken the oath of office, and has been admitted to the privileges of membership in the House, a member cannot be suspended or denied these privileges pending inquiry, but only upon being expelled in case proper charges have been sustained after hearing.

"Sixth, that when a member-elect presents himself to take the oath of office, he cannot be denied the privilege of taking it, or after the oath has been taken, it cannot be denied adequacy merely because of any alleged opinion, state of mind, or intent, claimed to be inconsistent with the oath.

"Seventh, that mindful of the lessons of history and as a safeguard of political liberty and representative institutions, it was expressly ordained by the people in the Constitution of the State that no other oath, declaration or test save that set forth in the Constitution, should be required as a qualification for office of public trust, and that the Assembly has no authority to establish any test of loyalty or political principle as a

qualification of membership in addition to the prescribed official oath.

"Eighth, that it is of the essence of representative government that no member shall be expelled from the Legislature or deprived of the privileges of his seat merely because of political opinions, or affiliation with a political party, in the absence of any proved violation of law on his part or of misconduct as a member of the Legislature.

"Ninth, that it is essential to the security of the community and to the maintenance of law and order that the peaceful means of political expression through the ballot box and representatives in legislative assemblies should not be denied or constituencies disfranchised because of political opinion.

"Tenth, that it is of the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts; that a member elected to the Assembly is entitled to the benefit of the presumption of innocence; and that a member of the Assembly duly elected, being of sound mind and possessing the qualifications prescribed by the Constitution, cannot properly be expelled or denied the privileges of his seat except upon charges duly laid and upon proof duly taken of personal misconduct as a member of the Assembly or of the commission by him of some act constituting a violation of law.

"Eleventh, we deem it important that this vital issue, the proper decision of which is essential to the security of the Republic, should not be obscured by the reception of testimony, statements or declarations as to matters here or abroad, in the attempt to indict a political party or organization, without first laying proper charges with proper specifications directly con-

necting members accused of personal and guilty participation in illegal acts.

"We therefore respectfully urge:

"That this committee at once report to the Assembly that there is no question properly before the committee of any disqualification on the part of these members; that no charges against these members of any constitutional disqualification or of any misconduct in office or of any violation of law on their part have been properly laid.

"We also urge that this committee report:

"That the members under suspension should at once be restored to the privileges of their seats and that if it is desired to present any charges against them of any violation of law, such charges should be properly formulated and that until such charges, properly laid, have been established by proof after due opportunity to be heard, these members shall enjoy all the privileges of their seats in recognition of their own rights and of the rights of their constituencies.

"In support of these propositions and suggestions we submit a brief herewith.

"CHARLES E. HUGHES,

"MORGAN J. O'BRIEN,

"LOUIS MARSHALL,

"JOSEPH M. PROSKAUER,

"OGDEN L. MILLS,

"Special Committee of the Association of the Bar
of the City of New York.

"New York, January 20, 1920."

At the conclusion of Mr. Hughes' remarks, Chairman Martin replied angrily, "The distribution of those briefs creates confusion here, and I desire to have it suspended."

This was enough for ex-Justice Hughes and his as-

sociates. They turned on their heels and left the Chamber without further remark.

Chairman Martin then presented what he called "a statement," which he put forth "as an expression, perhaps, of our understanding of the matters that are brought up for the consideration of the Committee." This statement was as follows:

"Information came to the Assembly through various channels that the men mentioned in this proceeding were members of a party or society whose platform of principles and whose doctrines as advocated to-day, called for and demanded the complete destruction of our form of Government by the fomentation of industrial unrest the bringing into play of force and violence and direct action by the mass. That the men here mentioned, affiliated with that party or society, have subscribed to and advocated such principles and are in favor of the absolute substitution of minority for majority rule. That they are in hearty accord and sympathy with the Soviet Government as it exists in Russia to-day, and they have declared their solidarity therewith.

"It is claimed, among other things, that in 1917, when our country was at war with Germany and summoned the strength of the people to the great struggle, the party or society to which these men belong and to whose program they have subscribed, in open convention and with calculated deliberation denounced the war as criminal, its purpose capitalistic, its motive profiteering, and pledged every man in that party to oppose the war and all the means adopted by the Government for carrying on the war in every way. That the men herein named by voice and vote in public and in private opposed every measure intended to aid the prosecution of the war to a successful conclusion and gave aid and comfort to the enemy.

"It is claimed also, that in August, 1919, after the schemes and program of the Russian Soviet Government were fully known and their practices and principles fully revealed, the Socialist Party of America, of which these men are members, in deliberative convention declared their allegiance to and solidarity with such Russian Soviet Government. That they secured their nomination and procured their election under the pretense to the people that they were merely availing themselves of a legally established means for political representation, whereas in truth and in fact, it is claimed that this was done to disguise and cover up their true intent and purpose to overthrow this government, peacefully, if possible, forcibly if necessary.

"It was claimed these men have taken an oath to support the Constitution of the United States and the Constitution of the State of New York and that they have made no promise in conflict with the requirements of such oaths. The claim is made that these men are with others engaged in a large and well-organized conspiracy to subvert the due administration of law and to destroy the right to hold and own property honestly acquired, to weaken the family tie which they assert is the seed of capitalism, to destroy the influence of the church and overturn the whole fabric of a constitutional form of government; and our inquiry will be conducted with a view to ascertain and determine whether there is truth in such information.

"We intend the men under investigation shall have fair play. The case is not prejudged. The Committee sit with an open mind. The men shall be accorded the right to select their own counsel and assistance will be given them in the procurement of evidence.

"After the close of the investigation and after the submission of the matter by counsel for the interested

parties, the Committee will with all convenient speed report to the Assembly its determination."

The original resolution with the charges contained were thus emphasized and enlarged upon by the Chairman. The source of the authority of the Chairman's new charges was not stated.

When the Committee from the Bar Association had gone, and counsel on both sides had taken their places, counsel for the Socialists opened fire.

CHAPTER V

SOCIALISTS CHALLENGE JUDGES

Mr. Hillquit, chief counsel for the Socialists, opened by attacking the right of the Judiciary Committee to sit in judgment upon their political opponents. He charged the members of the Committee with personal bias, and of preconceived opinions on the question. He said:

"I challenge the right of this Committee, the Judiciary Committee of the Assembly, to conduct this proceeding, and I move you that the Committee report back to the Assembly a recommendation that the case be tried by a special committee elected by the Assembly and not appointed by the Speaker, to be composed of such members of the Assembly who have either voted against the resolution, which is your authority, or who have subsequently voted for its reconsideration."

Mr. Hillquit then pointed out that however the Chairman and his associates might designate the proceedings, whether they called it a trial or an investigation, it was in reality a trial. Said he:

"You are the judges as well as the jury in our case. It is true your determination will not be final, but it is also true that you gentlemen will pass upon the admissibility or the inadmissibility of evidence; you will make the findings of fact; you will report your conclusions and recommendations to the Assembly; you are in the position of a referee. You are a trial body, and one of the first requirements of any kind of a trial

body, whether it be court without a jury; whether it be jury; whether it be a Grand Jury; or whether it be a court-martial, is that the judges must be clear from any bias—must not have formed an opinion of the guilt of the defendants. Otherwise, it isn't a trial. Otherwise it is merely a farce in which we go through the motions of a trial without reaching its substance."

Mr. Hillquit declared that the Socialists' objection was a two-fold one.

"We hold," he said, "in the first place, that you were appointed and selected by our accuser: we hold in the second place that you have publicly, solemnly expressed your conviction of the guilt of the men who are before you now."

He recalled the opening lecture of Speaker Sweet to the accused Socialists in which Mr. Sweet used the following words:

"You have been elected on a platform that is absolutely inimical to the best interests of the State of New York and of the United States."

This Mr. Hillquit declared to be a "specific, concrete, definite, affirmative declaration of the guilt of these five men before they had ever been charged with any guilt."

Mr. Hillquit continued, "Thus the Speaker of the Assembly appears as the first accuser of these five men. Mind you, he does not say as this statement now read by the Chairman says, 'It is claimed'—'information has come to us'; he makes the very definite positive statement that these men are guilty of the charges. Thereupon having made that concrete and definite statement IPSO FACTO, and not in the shape of this posthumous resolution reciting all these facts, the very same Speaker having had the question referred to your Committee, the Judiciary Committee, which was then appointed, proceeds to the appointment of the person-

nel of your Committee. Thus the accuser selects his own judges. Imagine an analogous case, a criminal case, for instance, in which a prosecuting attorney would appoint his judge. Imagine a civil case in which the plaintiff would choose and appoint his judge to sit on his case. Has there been any such proceeding attempted anywhere, in any tribunal, no matter of what character in this country? Never, I make bold to state."

The lawyer for the Socialists went on to point out how the resolution had recited a "very definite and concrete conviction of their guilt." Said he:

"In other words, the proceeding starts out with the imposition of the sentence and with the ordinary speech of the judge from the bench following a conviction. It is then followed, not by charges, but by a recital of findings against these men, and after all has been said and done, after they have been told definitely that they are criminals, they are told, 'Now get out of this company of decent men and come back later, and we will try you and find out whether or not you are actually guilty.' I submit that all of you who have voted on this proposition and have solemnly declared your belief in the guilt of those men, and have not retracted it on voting for consideration, stand here not as judges but as accusers."

After pointing out the extraordinary character of the case, Mr. Hillquit concluded by saying:

"Let us all feel, let the people of the State feel, that these men are not having a mock trial, that they are having a real trial, that they are being tried before judges not informally pledged to do justice to them, but who in their hearts and consciences can render justice to them. I request your immediate adjournment."

Mr. Stanchfield, chief counsel for the prosecution, did not attempt to meet Mr. Hillquit's challenge. In

an evasive argument, he exclaimed, "I say that counsel for the Judiciary Committee intend to establish upon this hearing that the five men who are involved in this investigation have planted themselves upon the platform indicated in the document that the Chairman has read; that they have subscribed to the principles and they have advocated the doctrine and they uphold the plan indicated in the paper to which your attention has been called by the Chairman of this Committee."

In answer to the charge that the Committee had no right to try the case, he declared: "If there be a committee in the Assembly of New York who are educated, trained, born and bred to the spirit of asking and giving fair play, it is a committee of the bar." This was meant as a bit of flattery, the Judiciary Committee being composed solidly of lawyers.

Stripping from the prosecution the veneer of courtesy which it had first tried to wear, Mr. Stanchfield then openly declared concerning the unseated Socialists:

"These gentlemen are entitled to no representation, and this Committee itself could go ahead in secret and take testimony and report to the House and upon that report, expulsion could be had and no one could complain."

No wonder Mr. Hillquit, speaking for the defense, was compelled to assert that his "very distinguished friend on the other side had evidently not grasped the point."

"The point that I made," said Mr. Hillquit, "was not that charges had been preferred by the Speaker of the Assembly, or by anybody else, but the fact that both the Speaker and the members of this Committee have expressed a definite opinion of the guilt of the men now before them."

After lengthy debate on both sides, the Chairman without hesitation ruled that "the Chair feels constrained to deny the motion."

Mr. Hillquit then sought to have removed those members of the Judiciary Committee who had been members of, or had taken part in the activities of, the Lusk Committee, which committee had assisted the prosecution by supplying "evidence" it had gathered in a supposed investigation of "radical" organizations. Mr. Hillquit particularly challenged Assemblyman Louis Cuvillier, who had expressed himself on the floor of the house on the night before, to the effect that "if the five accused Assemblymen are found guilty, they ought not to be expelled, but taken out and shot."

Mr. Hillquit said, "A person who holds such an opinion is qualified as an executioner and not as a judge."

This remark caused considerable amusement among the numerous spectators.

At the end of the argument, the Chairman repeated his monotonous slogan: "The motion is overruled."

Mr. Hillquit then made the important motion of the day questioning the authority of the Committee to proceed. Said he:

"I move that the proceedings before this Committee be dismissed and that the Committee report to the Assembly recommending the immediate dismissal of the proceedings now pending before it in connection with the five Assemblymen under charges, on the ground that the proceedings are without warrant in the Constitution or in the statutes of the State of New York, and are absolutely illegal and void from every point of view. I maintain, in other words, that if every word of the resolution was proved to be true, if every charge read this morning by the Chairman of the Committee was proved beyond a shadow of a doubt to be

true, that even then this Committee and the Assembly are absolutely without power to suspend or expel the five members under charges; that so long as there is no question about their election; that so long as there is no question about the fact that they are citizens and residents of this State and have taken the oath of office, that ends the power and jurisdiction of the Assembly with reference to them."

Ridiculing the assertion of the prosecution that the Assembly was the sole judge as to the qualification of its members, and could proceed arbitrarily, he said that "this impression is without foundation in law and is absolutely erroneous."

He continued: "I shall try to demonstrate by the expressed provisions of the law, by all the precedents in this State, and similar precedents in other states, as well as the Congress of the United States; also on the basis of the general spirit of the Constitution of our State and of the institutions of our government, that this contention is absolutely fallacious."

He pointed out that the power of the Assembly to judge of the qualifications of its members was intended to be a power to judge constitutional qualifications and not qualifications set up by the Assembly itself. He quoted Article XIII of the Constitution of the State of New York, Section I, which after prescribing the Constitutional oath ends by saying:

"And no other oath, declaration or test shall be required as a qualification for any office or public trust."

Said Mr. Hillquit, "What did the framers of the Constitution intend to convey by this direct, explicit injunction? Only one thing. To prohibit absolutely and definitely a proceeding of the kind in which you are engaged now,—that is, **ADDING A TEST OTHER THAN THE CONSTITUTIONAL OATH**

as a qualification for holding the office of member of Assembly."

He then attacked the effort of the Assembly to set up new qualifications—qualifications of "loyalty" as understood by Democrats and Republicans. He declared:

"Such a test is absolutely and in express terms prohibited by the Constitution.

"We could generally rest on this argument, for it seems the proposition is absolutely unanswerable. If the framers of the Constitution thought it necessary to make express provisions to this effect—an express prohibition of imposing a new test—then you have no right, you have no authority to impose a new test. But I will say to you that we do not have to rest upon the express language of the Constitution alone, all-sufficient as it seems to be; we make the contention here that all precedents of this House or of this Senate of the State of New York and of all other legislative bodies in the United States, including both Houses of Congress, have always uniformly and without deviation so held. In other words, the proceeding which you have initiated is absolutely unprecedented, absolutely unsanctioned."

Mr. Hillquit then cited examples in profusion.

He ended with this remarkably close analogy, that of the case of Lucas E. Decker, a member of the Assembly from the 4th District of the County of Queens in the year 1918. Mr. Hillquit's citation was as follows:

"In the case of Decker, the member was charged with having failed to register for the selective draft although he was of draft age; of having falsely represented that he had been examined and discharged on account of bad health while he had not, as a matter of fact, presented himself for examination at all; and

of having in November, 1917, claimed exemption as a member of the Assembly, although his term of office did not begin before January first of the next year. On all these charges he was found guilty by the committee. The committee reported that it became Decker's duty to register on July 24, 1917; that he did not do so until November 23, 1917; that he was married November 9, 1917; that he then claimed exemption as a state officer and a married man—you see he got himself purposely married and purposely elected to the Assembly to evade the draft; that he was a lawyer and charged with knowledge of the law far beyond that of a layman in like circumstances; and the fact that for at least four months he disregarded the law while advising others to obey it, and assisted in the work of getting other young men to go to the front, would justify any committee of citizens in taking the position which was taken in this matter by the objectors. The report continued: 'These circumstances were matters of public record during all the period of time Decker was running for the office of member of the Assembly, and neither denied nor affirmed by him as far as any evidence produced before us showed with the exception of the fact that he stated he had been discharged on the ground of defective eyesight; and your committee could not recommend the dismissal of said Decker from the office of Member of Assembly on the ground that he secured his election by misrepresentation in any way.'

"Now, just listen to what follows: 'Since his election, and since he has been in the discharge of his duties as an Assemblyman, there is no evidence that he has committed any act that disqualified him in the judgment of your committee from so acting; that the facts are insufficient for us to hold and recommend that he should be deprived of his office at this time.

Your subcommittee holds that IN ORDER TO REMOVE A MEMBER OF ASSEMBLY FROM OFFICE, UNDER THE CONSTITUTION, SOME QUESTION INVOLVING THE ELECTION OR RETURNS IS NECESSARY BEFORE THE ASSEMBLY HAS JURISDICTION IN THE PREMISES; or, further, that the person so elected must be entirely disqualified under the constitution, or by his conduct in the House must disqualify himself. THESE REGULATIONS ARE SPECIFICALLY SET FORTH IN THE CONSTITUTION ITSELF, and there is no evidence before us that any of them are lacking, as far as the respondent in this proceeding is concerned. WE, THEREFORE, RESPECTFULLY RECOMMEND TO THE JUDICIARY COMMITTEE THAT A REPORT BE MADE DISMISSING THE COMPLAINT AND THE SAID REPORT BE BY THE SAID COMMITTEE SUBMITTED TO THE ASSEMBLY FOR FURTHER ACTION.'

"The report was made; you remember the points. They pointed to the fact that no matter how morally objectionable a member's conduct may be in the eyes of his fellow members, so long as he possesses the constitutional qualification, age, citizenship, residence; so long as he has been duly properly elected, he must be by constitutional mandate admitted to his seat, and only if he misbehaves as a member on the floor of the House can he be expelled. This is very much to the point, is it not? unless there be a difference in the fact that Mr. Decker was—I don't know which—a Republican or a Democrat, but at any rate not a Socialist. But the Constitution was then clearly understood, and this report is signed by very good, authoritative names—Louis N. Martin, Walker S. McNab, Harley G. Green, Wallace F. Pierce, William H. O'Hara. That was

done only two years ago, in this Assembly, on exactly the question before you. You dismissed it by unanimous vote—144—not a single vote against. If there be a more analogous case to the one at the bar, I should like to see it.

“This, then, is the law. These are the precedents and in the face of all that; in the face of the mandatory provision of the Constitution; in the face of every precedent known to the law; in the face of your own unanimous action, and the precedents set by you, you are asked at this late hour to come and to invent new qualifications and make new tests for the admissibility of members duly elected. You come before us with charges that these men are members of a political party that has been disloyal to this country, that represents principles inimical to the best interests of this country.

“Do you gentlemen realize what issues you are raising? We are here as representatives of a party whose platform in the last half a century has been radically different from the platforms of other members of this House. The Socialist party has always maintained and maintains now that it alone represents the true interests of the vast majority of the people of this country—the workers of hand and brain, the workers in factory and on farm. It has been our contention right along that the old parties who stand for the perpetuation of the present economic system which enslaves the many for the profits of the few are disloyal, are acting inimically to the best interests of the vast body of the people of the United States. You come back and you tell us you represent the true interests; you represent true loyalty; that our conception of what is the actual interest of the people; that our conception of loyalty constitutes treason. Who, pray, constituted you the judges as to what policy, what economic in-

dustrial policy, advocated by a party constitutes or does not constitute treason?

"It is history alone which will render its final verdict upon you and upon us, and in the meanwhile we have for over 120 years been united upon the proposition that it is not given to any man; that it is not given to any body of men, to decree in a free country, in a democratic country, that those are eternal and immutable doctrines of policy, of politics, of social philosophy, which alone we shall recognize.

"The very foundation of our government is based upon the assumption that the people as a whole—not you gentlemen, not you 145 members of this body—but the people of the whole State, the people of the whole country, eventually are to determine what is for their interests and what not for their interest; what they will tolerate as loyal conduct and what they will not tolerate; and that the people will express their views, their desires, by proper constitutional methods; that they will meet in groups united by the same ideas, by the same social concepts and will elect representatives; that they will allow other groups to do likewise and that in the clash of conflicting opinions and views and ideas and strivings, the vast body of the people, the majority of the people, will find expression; that what is considered treason to-day may become the law of the land to-morrow; that just as the abolitionists in the early days who were attacked by eminent respectable gentlemen in terms in comparison with which your declarations are mere compliments, that they in the long run had the support of the people of this country and became the majority.

"What, I ask you, is left of representative government, what is left of democratic institutions, if you allow a majority in any parliamentary house elected by the whole body of the people to pass judgment

upon the views, upon the policies, of their fellow members?

"Can't you see where that would lead you? If the Socialist members of the Assembly are to-day expelled or excluded for the sole reason that their platform, their party, are not to your taste, what warrant is there that the same contention won't be made, perhaps, next year, perhaps three years from now, against the Democratic Party? It seems to you impossible. It seems to you absurd. Why, this proceeding seemed impossible and absurd to us only two weeks ago, and it has happened. You set the precedent once. You sweep away the constitutional limitations and guarantees. You substitute the arbitrary opinions or arbitrary views of the majority for your law, for your constitution, for your popular will, and you have a situation of chaos and civil war instead of a well regulated democracy.

"It has happened in this state very often that either house of the legislature was either Republican or Democratic by a very narrow margin. Perhaps a few men decided it. Look at the temptation to have the minority come together one particular day when the majority happens to be absent, having dinner or playing poker, and that minority, then finding itself the majority for one single day, uses its power to exclude a sufficient number of the majority party to perpetuate itself in power. Why not? Qualifications? If there is absolutely no rule for the qualifications required, you will find ample qualifications or lack of qualifications in your minds to justify such action.

"I am not pleading for the five Assemblymen, their office, their jobs. They don't care for them to such an extent. They are entitled to their offices. They want to perform the duties for which large constituencies have elected them. But, compared with the vital im-

portance of the case itself, their fate, their office, their services are as nothing.

"I don't plead in behalf of the Socialist party. The Socialist party is not on trial before you, no matter how much you endeavor to make it a trial of the Socialist party. The Socialist party, the Socialist movement, cannot be tried, cannot be found guilty, cannot be outlawed, cannot be suppressed. There never yet has been a power, a physical power, anywhere in the world that was adequate to suppress the onward surge of a great popular movement, or to stamp out or to qualify social ideas and ideals.

"This proceeding may be delightful and novel to you. It isn't new to us. It has been tried before. In the balmy days of the Czar, before the Duma was instituted, the policy of the Russian Government was to outlaw and to destroy the Socialist movement. You know who has been outlawed and destroyed in Russia and who has been triumphant there. It is the Romanoffs, it is the Czar, it is all the instruments of oppression that have been destroyed. It is the popular movement of the Socialists that has triumphed.

"Bismarck attempted to outlaw Socialism. He passed or had passed legislation to that effect. He declared the party outlawed from the political community of Germany. To-day the Kaiser who represented the powers behind Bismarck is what you would not want to be; and as far as Germany is concerned, the only question there is which of the two dominant Socialist parties shall remain in control.

"We are not afraid of suppression. At a time when one-half of the world is under Socialist control; at a time when the Socialist movement has matured probably the only social organization possible under present conditions throughout the greater part of Europe, it is altogether too late for any body of men on this

side of the ocean to determine to do their little stunt to kill Socialism in this country. You can no more kill the Socialist movement in the United States than you can kill social progress, the development of industry, the development and growth of civilization generally.

“As a party we are not afraid of your actions, but as citizens, as members of a democratic community, we have our word of solemn warning to address to you. We say to you, we are living in an unusual time. Five years of war, of suffering, of destruction, have unmade the world, have ripped up all social institutions, all organizations, have created a new condition, a condition which is largely in the making. Our generation has to meet the greatest problem that has ever confronted the world. Out of the ruins of the old world, out of the chaos created by the last few years, it devolves upon us, upon the men and women of our generation, to build up a new, livable world.

“We Socialists are ready to contribute our share. We claim to be—we always have been—the most potent factor making for orderly, quiet, peaceful social changes. We do not attempt to usher in a new system by violence. We know it is just as foolish to bring in radical reforms by violence as it is folly to try to stem reform by violence.

“And we say to you that the contemplated action of this Assembly, if consummated, will be the first tragic act of violence instead of law—violence perpetrated by the very men claiming to uphold law. It will loosen the sluice gates of violent revolution which we Socialists have always endeavored and are endeavoring to stem. We say to you, you have no warrant in law, no warrant in the constitution, no precedent, no warrant in the spirit of the institutions of this country, to proceed to expel these five men

elected by the people and having the same right on the floor as you. As your fellow citizens, we say, take care as to what you are doing."

To this eloquent argument, Mr. Littleton for the prosecution, replied in a long oration. He assured the Assembly and the Judiciary Committee that they were altogether in the right, even if that happened to be an arbitrary right. Said he:

"The charge is made here that these Assemblymen were pledged to their organization, by their constitution, to obedience to the dues-paying members of their organizations, who were or might be aliens or minors; to do in this Assembly Chamber, when they got here, not what the constitutional oath laid upon their consciences and commanded them to do; but to do as they were bid to do and commanded to do by the very agencies with whom they entered into a secret agreement; to give their loyalty to, not to the State of New York nor the Constitution of the country.

"The charge is made that these Assemblymen, instead of taking the oath of office as prescribed in the Constitution of the State, and as it was commanded by the Constitution of the United States, that it should be prescribed in the Constitution of these States—I say instead of taking that oath, with the obligation to serve the State and to support the Constitution of the State and of the nation, the charge is made here that while they took that oath with their lips, they take their obligation, with their fortunes and their sacred honor, to the secret agencies whom they came here to serve; and that when they took that oath, they intended not the service of the State, they intended not the support of the Constitution of the State or of the United States; but they took the oath here with their lips, and back behind with the agencies who sent them here, that they would do what those agencies de-

manded; and that they took that obligation, as we shall show, in writing, to their masters behind."

In answer to the assertion that the Assembly had no power to enforce the suspension of the Socialists, Mr. Littleton declared:

"I repeat that if the person who comes to take his oath here has given a pledge before he came here that he with others not disclosed; he with others not revealed; he with others not within sight or sound of the public agencies of the State, would engage in a program of violence against the country, against the Constitution of his State and against the Constitution of his nation; if he stands pledged to that sort of program and comes to take the oath of office, his pledge so taken prior to the coming here, his agreement not to keep his oath of office, his agreement to destroy the country whose Constitution he has taken oath to support, his agreement to attack the country which he pretends to represent, his agreement to destroy the Government which he pledges himself to maintain, his agreement to maintain law and order when secretly plotting with other men to project disorder, his agreement to do all that is the most colossal offense against his future service in that body and empowers that body to rid itself of that contagion, if contagion it be."

Mr. Littleton attained his climax in the following words:

"When a man whom his fellow citizens have honored with their confidence, on the pledge of a spotless reputation, has degraded himself by the commission of infamous crimes which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member, which should have no remedy of amputation to apply until the poison had reached the heart."

Mr. Hillquit then accused Mr. Littleton of confusing "four different propositions, arguing them all together." He insisted that the committee had no power under the constitution to try the five men on the charges presented.

Mr. Stanchfield, resenting the bringing in of the Constitution into the discussion, ended by saying:

"Mr. Hillquit, Mr. Stedman, Mr. Roe, Mr. Block, and these five men who are under investigation are here as a matter of courtesy—let us have no misunderstanding about that—purely a matter of courtesy and not of right; and they are here because we wish them to be convinced as the result of this investigation that there are facts, and that there is evidence, that warrants the action of the Assembly of the State of New York. **YOU COULD PROCEED ARBITRARILY.**"

Mr. Hillquit, addressing himself to the Committee, denied that the fact that the Assembly had the power to do it gave it the right to do it. He said:

"As well might Mr. Stanchfield say that if ten good husky individuals took hold of one weak chap and kicked him downstairs for no reason in the world, there is no recourse against them because they have the power to do so: there is no question about power. The question is this: This Assembly and every other legislative body always have exercised their power in accordance with the Constitution and the law of the State. Otherwise, we wouldn't be here. We are here upon the assumption that you proposed in your actions to be guided by all the provisions of the Constitution and the statute law applicable to the case. There has not been a single case in this Assembly which has been disposed of merely on the statement: 'We are the judges; we are supreme; this is our will, and that is the end of it.'"

CHAPTER VI

THE INVISIBLE EMPIRE

Gilbert Roe, counsel for the defense, opened the second day of the trial with a motion to dismiss the proceedings until such time as the five Assemblymen should have been returned to their seats with full rights restored. He contended that the Assembly had no right to proceed with any business until the House was properly constituted and that it was not properly constituted as long as the five Socialist Assemblymen were unlawfully kept away from their seats.

To the various interruptions by the Chairman and the members of the Committee, during his argument in support of his motion, Mr. Roe said:

"I seem to have been the only man who has been questioned in the course of the argument, and perhaps I ought to say, if my language is at all intemperate, I do not mean it. I certainly do not want it charged up to the Socialist party, because it just happens that I am not a Socialist; I am just an old-fashioned Republican who believes in the Constitution and the Declaration of Independence."

This sally was greeted by another outburst of laughter from the House.

The next motion was presented by Mr. Stedman of the defense, who argued that the proceedings should be dismissed on the ground of the insufficiency of the charges. He opened by saying, "I cannot pretend in what I may have to say to meet the exquisite and anarchistic doctrine that you have the privilege of ex-

cluding undesirable members with or without reason."

He divided the charges against the Socialists into seven. The first charge he declared was the resolution of the Socialist Party expressing solidarity with Soviet Russia. He pointed out that the charge failed to define what kind of Soviet Russia was meant—the Soviet Russia that actually existed, or the Soviet Russia as defined by a hostile press. He added:

"Never before have we regarded a person's opinion as to the economic or political fabric, or the social institutions which apply to another country, as a condition of membership in a legislative body. We exclude a man because he believes that the people of Russia have a right to develop their own economic and political life in their own way. To-day you lead out with that; that is the attack made against these Assemblymen—you might have gone further with equal truth and said that in the same convention by which a resolution was passed extending sympathy to Russia, heartfelt approval was also extended to those in Ireland who believe in self-determination and liberty. And you could have followed it up with the same applicability to Egypt; you could have followed it up with the same applicability to India; in other words, the doctrine of self-determination meant to the Socialists the language which it purports to carry; and believing in that, would it become a crime to stand for Irish independence, for India's, for Egypt's, as we stood for that of Russia?

"But the offense here is that these men have views on a foreign political system; no intimation, no declaration of fact that they propose, or even dream, that a system which naturally develops from Russia's material conditions is adaptable to a highly complex industrial system such as that of the United States.

"And how do these gentlemen who assume that

Russia to-day stands for wild and disorderly anarchy know that that is correct? People suffering for a half, or more than a half, thousand years, in ignorance and oppression, are engaged in a great war, where they lose more than all the other armies engaged in the conflict—by corruption, disorganization, dishonesty. The army comes back on them—a great mob—they dissolve an army of 12,000,000. They re-equip, in the face of that, an army of 2,000,000. They fight on seventeen different points at a time, and on four great fronts. They fight against an organized, equipped army. They develop an educational system. They start the building of six railroads in the midst of it all, with four armies attacking them from the east and west and south. Is that the Russia you are objecting to?"

He then called the attention of the Committee to the fact that in other countries Socialist parties had taken a similar attitude towards the Soviet Government, and that these parties had large representations in Parliament and were not excluded or molested on that account.

Mr. Stedman summarized charge No. 1 against the Socialists in the following language:

"As to your first count, you are charging what? First, that the system in Russia is so reprehensible that if a convention approves of it and a man is a member of a party through whose convention such declaration is made that he becomes thereby, by reason of that, disqualified to sit in your midst. There is no other way around the first paragraph, except the very fanciful way of saying you have power, and right or wrong, you will do it anyway. But before I leave that phase, I wonder what the gentlemen of the Committee would say if the doctrine and the theory that, wrong or right, we have the power anyhow, were uttered by the soapboxer on the street, instead of the distin-

guished lawyer, who should recognize that there is imposed upon all bodies some measure of regulation and duty?"

When the Chairman interrupted, contending that a discussion of Russia was out of place, Mr. Stedman declared that sympathy with Russia constituted the chief charge against the five men. To this the Chairman answered:

"This is hardly an indictment; this is an allegation. Strict criminal law cannot apply here. **WE ARE NOT CLAIMING THESE PEOPLE ARE CRIMINALS.**"

Recognizing the value of this point, Mr. Hillquit exclaimed, "Does the Chairman desire to have that of record that there is no claim on the part of the accusers that these five men who have been denied seats in the Assembly are not criminals?"

The whole house leaned forward to catch the Chairman's reply. It came hesitatingly, but finally he said:

"The Chair would like to have it appear on record that he does not so understand it." After a full half minute's hesitation, he added briefly, "Of course, the Chair may be very much in error."

This admission on the part of the Chairman created consternation in the camp of the prosecution. It was in direct opposition to the accusation that the five Socialist Assemblymen were "plotters and conspirators."

Mr. Hillquit, following up the point, said quickly, "If they are not charged with crime, if they are not charged with anything else, what are we here for?"

Mr. Littleton felt it necessary to rush into the breach. Said he:

"Mr. Chairman, does the gentleman think that everybody who falls short of the criminal statute is eligible for election to a legislative body?"

Mr. Hillquit promptly replied, "Some who do not fall short are sitting in it."

Mr. Littleton drew himself up. "Is that a charge against this legislative Assembly?" he asked.

Mr. Hillquit, smiling, replied, "No, against legislative bodies generally.

Mr. Littleton demanded to know what legislative bodies were referred to, but the Chairman interfered, saying, "Gentlemen, we cannot have this. Discussion as to the ignorance of the Chair, of course, is always pertinent."

After this exchange of repartee Mr. Stedman resumed his argument. He finally pleaded guilty to the first charge against the Socialists—that of sympathy with Russia—saying, "Suppose we say to you we make no contest on your first charge; we have no evidence to offer; you need offer none. We plead guilty to it."

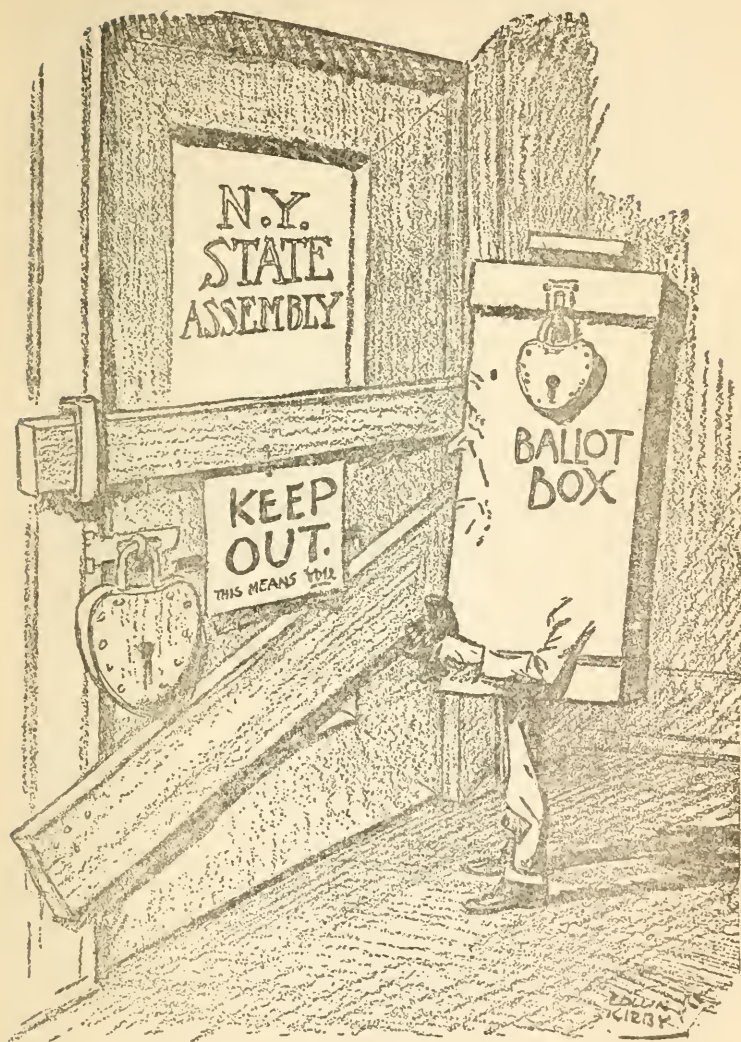
Mr. Stedman then attacked the second charge in the indictment, which related to a clause in the Socialist party's constitution which reads:

"In all my political actions while a member of the Socialist Party, I agree to be guided by the Constitution and platform of that party."

"That is actually charged as an offense against them," remarked Mr. Stedman. "Now, in the first place, this government is one of political parties. It must be so from its very nature. You cannot conceive of a system of governmental representation that is not a government of parties.

"You have issues where groups become antagonistic—free traders, protectionists, prohibitionists and wets, and you form in groups and parties, and men who come into legislative halls with a purpose, come in as a group and act as a group; and they represent a party in the interest of that party, and insofar as they say we represent all the people in the district, they

WHEN THE BOSSES RULE



Courtesy of New York World

NO ADMITTANCE!

mean that in their minds the interests of those they represent must of necessity be the interests of all in the district."

He then read from the election law of the State, showing that the law recognizes political parties and provides for their existence.

"We submit," said Mr. Stedman, "that we have a right to form an organization and to have one that functions; and when men come into this chamber, they will not regard entrance here as a justification for refusing to act any longer as real representatives and servants of those who have sent them here."

In discussing the fourth charge against the Socialists, relating to the provision in the Socialist Party's constitution calling for "Suspension or expulsion of members for refusing to carry out the instructions from dues-paying organizations," Mr. Stedman declared this was no cause for expulsion.

Said he, "I would call your attention to the right that any man has to disassociate himself from persons not in accordance with his theory."

As to the charge that "Socialist Party instructions might be given by an Executive Committee, both wholly or in part, composed of alien enemies," Mr. Stedman called attention to the fact that no claim had been made that foreign born persons or alien enemies had ever dominated even the most local Socialist Committee. He called this charge merely hypothetical. He said this hypothetical crime was charged to "citizens who think as much of this country as those who wrap themselves in a cloak of self-righteousness."

The next charge taken up dealt with the war resolution adopted at the Socialist Party convention in St. Louis. After explaining the circumstances under which it was constituted, he said:

"The misunderstanding about the position of the

party in disapproving war comes from the fact that most people have been unfamiliar with the Socialist theory in reference to its attitude on war. We are charged with the offense of opposing the war. It must be patent to you in the first instance that every man in this country had a right to oppose the war before we entered, and countless thousands did. It must be equally apparent that when you are in a war, some one some time must suggest its discontinuation; and to suggest its discontinuation presupposes an opposition to that war. Our traditions are fairly well fixed, we think, but sometimes the habits of a nation prove as unstable and weak as the habits of individuals. Our country by tradition was opposed to conscription, except as states filled their quotas. We had a long record of men in Congress, of men in public and private life, who opposed war. Lincoln opposed it and voted against appropriations, and so did Clay; you know the record full well. Our party not only opposed it on the grounds which heretofore had been regarded as legitimate humanitarian grounds, but we offered an explanation as to its reasons. We rejected the headline solution of a "kings' war." We believed it to be the logical development of our economic system.

"It was not something new, and you know it. The party had made its declaration against war. It had opposed appropriations for arms. It knew that armament meant war, and that war meant destruction, disease, insanity. It denounced the war as criminal. You need do nothing more than to glance at the world to-day to realize that criminality and infamy do not sufficiently describe the destruction of humanity by so-called civilized men. If there is any voice on the soap-box, the stump, or out in the wilderness, that can breathe a breath of real life into the world, then we need to hear it now, here, and in every other country.

"The party pointed out that this was not a war to make the world safe for democracy—not that we challenged that belief and ideal in the hearts of countless thousands of men who went to the front, but that we understood the forces engaged were not purely ethical. We knew the economic conflicts which ran all the way from London to Bagdad and which played for possessions of raw materials. We knew that system would bring what it did bring.

"When the war was proceeding, the party, as you may recall, attempted to hold its conference in Stockholm and in other countries in order that men representing the working classes of the world might meet and stop the frightful slaughter; but they were not permitted so to assemble. We went into the war; but democracy has not come. Self-determination has not come into the world.

"We do not complain that there has not been a realization of promises, no matter how sacred that may have been made before humanity; but we insist that this party had a right to its opinion as to why we went into that war. If it was false and misleading, you at least had an excuse for the suppression of our press and for suppressing information during the war—namely, that Success necessary to American arms. But that gives you no right to-day, when the central powers are beaten, to do what you are doing. We should be given the opportunity thoroughly to state why we have these views and why we have those theories.

"You charge us with holding an opinion. Why, the Democratic party had an opinion during the War of the Rebellion. If I mistake not, it was Abraham Lincoln who suggested a return to slavery, if the seven States would come in, and that the slaves might be purchased back in 37 years.

"When General McClellan was the Democratic candidate for the presidency, he claimed that justice, humanity, and the public welfare demanded that immediate efforts be made for a cessation of hostilities with a view to an ultimate convention of the States. He favored any peaceable means to the end that at the earliest practical moment peace might be restored on the basis of the Federal Union of the States. He held also that the direct interference of the military authorities of the United States in the elections held in Kentucky, Maryland, Missouri and Delaware, was a shameful violation of the Constitution, and that the repetition of such acts in the approaching election should be held as revolutionary and resisted with all means and power. No one thought of imprisoning the Democrats who stood on that platform at that time. It was regarded as a legitimate expression of their convictions."

Mr. Stedman then referred to the prosecution's criticism of the Socialist stand on patriotism.

"Patriotism," he said, "is a very much misunderstood term; I judge so by the methods used by the profiteers when they wrap themselves in the American flag. We marvel at that idea of patriotism. Is not the ideal of those who would think of their country as a country of art, of literature, of social and material progress, who want it to be the most brilliant star in the galaxy of nations, to be imitated? who wish at the same time to be a part of a great fraternal and civilized world participating and acting with all other countries? Isn't that real patriotism? Patriotism is not the love of a machine; it is the love of the position in the universe which you hope your country to take as a great leader of human thought and achievement. It does not consist in witch-hunting, neither does it consist of fear of that which will

disturb the settled convictions of vested interests."

As regards freedom of opinion, Mr. Stedman declared:

"When a country loses confidence in its people rationally to come together and discuss problems and abide by a majority—that country is already giving evidence of faithlessness in its own institutions.

"We Socialists pursue a political program. We believe in the majority dictating the course of society. We repudiate the theory that a social agency must act through physical effort and discord. We have clear-cut notions and theories as to how to bring things about; but Mr. Hillquit was not making a threat when he said, 'When you challenge representative government, you welcome an autocracy; and when you do that, the end is clear!' He made that not as a challenge, but as a prediction. You will have either an autocracy or a representative democracy. Our form of government is that of a representative democracy, and when the opposition speaks of disloyalty, let me say that disloyalty is not disaffection or want of affection."

Mr. Stedman then came to the final charge against the Socialists, which he declared to be the only one that he considered had "any merits." Said he:

"You say: 'The Socialist Party of America did urge its members to refrain from taking part in any way, shape or manner in the war, and did affirmatively urge them to refuse to engage even in the production of munitions of war and other necessities used in the prosecution of the said war, and did thereby stamp the said party and all of its members with an inimical attitude to the best interests of the United States and the State of New York.' That is a fairly definite statement of what the framers of this paper may have considered to be the truth. That is an issue we are quite

willing to meet, and I think it will be an issue that they will regret they ever raised."

He concluded with the following assertion:

"The other clauses of your accusation deal with opinions, deal with regulations, deal with theoretical opinions of the party. These men should not be placed on trial, because, admitting all these charges to be true, they are not inconsistent with the requisite qualifications of a man elected to a representative body in this country where liberty exists and where the soul of America still throbs."

The eloquent words of Mr. Stedman had hardly died away when Mr. Littleton arose and startled the prosecution itself with a new discovery, to the effect that the Socialist members were guilty of being citizens of "an alien and invisible empire," a discovery which plagued the prosecution for the remainder of the proceedings.

Said Mr. Littleton:

"The representation with reference to what these five men did, and what they profess, and what they engaged to do, stands out as plainly as anything can stand out, that they gave their allegiance wholly and solely to an alien and invisible empire known as the Internationale.

"It stands out that they are citizens not in reality of the country which sustains and maintains them, but they are citizens of this invisible empire which projects itself as a revolutionary force into every country, menacing its institutions and threatening its overthrow. Their allegiance, before they ever enter upon the threshold of this chamber, was given to this empire, which masquerades at one time with the softness of parliamentary reform and which at other times declares itself in favor of revolution with force, according to the place and time.

"It is to that alien state, people of alien races—pledged to the destruction of this government and its institutions—that the charges say that these men belong to and act with. It is not a geographical state, Mr. Chairman. It cannot be bounded by the ocean or the seas. It cannot be bounded by territories. It cannot be bounded by the landmarks of history; but it is an invisible empire, using at one time the pretense of persuasion, and at another time the threat of force or violence, according as the law of the country permits it to do so, or as it may escape the vigilance of the laws. It does it in churches; it does it in public forums; yet unblushingly does it in legislative assemblies; and wherever the challenge is made, it escapes by declaring that it means the force of the ballot. Having used the violent words that mean revolution, they declare the revolution is to be merely a revolution brought about by persuasion.

"That is the state to which, before the five members had ever entered into this chamber, they had pledged their fortune and honor and allegiance; and that alien state is the invisible empire of revolutionary force, thrusting itself into the bosom of this constitutional republic and daring to overthrow this government, embodied, as it is, in the organic Constitution of the country; doing it by force if necessary; perhaps by peace, if possible.

"That is the program that is charged, Mr. Chairman. It is the Bolshevik program, a wild speculation. And it is done, as has been suggested, to determine, in parliamentary bodies and public utterances, the forces that lie behind, to which they do not hesitate to pledge their solidarity. Said Mr. Stedman, 'May we not express our sympathy with Russia? May we not pass a resolution in sympathy with the downtrodden of Russia?' That is not what the charge means, and that is

not what the charge says. Nobody is more gifted to see or more experienced to understand the meaning of that charge than Mr. Stedman."

Defining his conception of constitutional liberty, Mr. Littleton eloquently declared "that ours is constitutional liberty." He went on to charge that the five Assemblymen were direct agents of Lenine and Trotsky, saying:

"It is because Lenine and Trotsky, acting through these agencies, are proposing the installation of the same kind of government in constitutional America that they have inaugurated in Russia; and these are the agents and the instructors, according to the charge, to carry out the program—some to do it in their parliamentary bodies, others to do it in debates in halls, others to do it by writing books, others to do it by proclamation and manifesto, and still others to do it when the time shall come to strike, by force, as has been promised by the leaders of that particular party. It is quite a different thing from expressing your sympathy in a convention for downtrodden Russia. It is a little different program, Mr. Chairman, and the evidence in this case will disclose that these members, in conjunction with their party, have tied themselves irrevocably to the program, and they use the word "program" of Mr. Lenine and Mr. Trotsky, and what they have inaugurated in Europe. Let us be patient and see what Mr. Lenine and Mr. Trotsky stand for as a method of governing in Russia and in every other country, including this, and see what these gentlemen are endeavoring to further as a part of the program of Mr. Lenine and Mr. Trotsky.

"So that charge involves, I should say, a grave question as to whether these men pledged to an alien policy and to do it masquerading as a political party, can be put upon trial or upon a hearing or investigation

in a legislative Assembly, and see whether they shall be members of that Assembly and can take the oath of office.

"Mr. Chairman, this is the proper place, and surely this is the suitable environment, to remind you and your associates and the other members of this body present, that ours is a government of constitutional liberty; ours is a definitive creed established by a definitive instrument; ours is not an Italian liberty; ours is not a French liberty; ours is not a Slavish liberty; ours is not an Asiatic liberty; ours is a constitutional liberty, devised by the finest instruments ever devised by the wit and ingenuity and wisdom of men.

"Ours is a government, a constitutional republic, in the center of whose crown is the jewel of the Constitution.

"Before that constitution was adopted, when the revolutionary fathers gathered at the table to write the greatest proclamation of the rights of man, they said, 'We hold these truths to be self-evident, that all men are created equal, and endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.'"

Mr. Littleton, for some strange reason, did not finish the sentence quoted from the Declaration of Independence. The balance of the sentence which Mr. Littleton failed to read refers to the right of citizens to "alter or abolish" any form of government which becomes destructive of life, liberty, or the pursuit of happiness. The prosecution never explained the reason for this omission.

After reciting what he deemed to be the ideals of the United States, Mr. Littleton went on:

"Those ideals are the embodiment of the Constitution which these men ought to have been able to take their oath and support. No alien, no invisible empire, having one corner of it resting in the heart of Soviet Russia, another corner of it resting on the shoulders of the Spartacides in Germany, and another resting somewhere else, to which you swore allegiance, but to this country and to this standard, and to no other country or standard. That is the ideal for which we take the oath and undertake to support.

"Now with that situation, here is an Assembly organized under the ideals of that country and under its constitution; and the question here is, Mr. Chairman, can that Assembly inquire into whether or not five of its members are disloyal to the country, have sworn themselves and given their allegiance to an alien and invisible empire and placed themselves in the hands of a master who can withdraw them from this Assembly when he chooses? Can such a deliberate body as this make that inquiry, and finding the fact out, can it expel that agency from this body before the poison has contaminated the system?

"And yet the challenge is made and the excuse is made that the declaration in April, 1917, against this country and calling the war criminal, the motive profiteering, and calling it a war which was conducted for the benefit of the capitalist, and calling on everybody to resist every agency of the war by every possible means, when my son and yours were at the front; secretly acting and giving aid and comfort to the enemy when we were battling for the ideals of our fathers, and pledging themselves to thwart the agents of the Republic for the preservation of liberty; in dark places and secret ways, and writing it down unblushingly in their creed, that they dare get in front of the ideals of a real Republic and then claim the right to

sit unblushingly in the councils of that country and dictate its laws!

"Mr. Hillquit said yesterday, 'What may be treason to-day may be the law of the land to-morrow.' It will be the law of to-morrow if you let traitors write the law."

Here the Speaker got a salvo of applause. Summarizing his long and eloquent address, Mr. Littleton concluded by saying:

"What is the charge here? That these men belonging to the invisible empire of the Internationale, whose agents may be violent or peaceable, according as the law allows, and according as they may escape, are here acting as agents of Lenine and Trotsky, not to establish a Soviet republic under the rotten ruins of an infamous autocracy, but to establish a Soviet republic on the ruins of a constitution on which every man is pledged by every ounce of his blood and by that solemn vow which he registered in Heaven when he entered on the duties of his office. That is what the charge is, Mr. Chairman. Does it seem innocuous and harmless when thus considered, Mr. Chairman? Is it the soft whisperings of this and seductive and disparaging propaganda of peace which comes and talks about the white philosophy of reform, and which has behind it the red purposes of revolution? Is that the kind of thing we are accustomed to?"

"Before this investigation is over, and before the waves which have been stirred—the waves of public opinion—have finally subsided—I make no threat, but I make a prediction that this country will understand that this so-called political party, masquerading as a political party, and under the guise and name of a political party, is the agent and the co-conspiracy with the dark forces of this invisible empire whose ob-

ject is forcible destruction of constitutional government in America.

"This case will reach further as time goes on, and when we come to understand that everything that embarrasses our ideals of liberty and which we expect our children to take from us unimpaired; everything which came to us as the product of these illustrious men to whose labor and genius we owe everything we have; when we understand that this is the object of the deliberate assault of these men waged in words of peace, when compelled to, but used as violence and force when they dare to, and that is the overthrow of constitutional liberty in America—I say, that question, before it is over, will arouse this country. It will not be a tempest in the teapot, Mr. Chairman. It will be a question as to whether they can hypocritically masquerade as a political party and strike hands with every agency of force and revolution, and still make simple American people understand that they are not sworn enemies of their country and ready to overthrow it. That question will yet be understood and must be understood.

"I say, therefore, Mr. Chairman, the charges are not innocuous, that the charges are not inadequate. I submit that these charges lay upon your conscience and upon your judgment the discharge of a duty to your country greater than any other duty to which you have been sworn."

Mr. Littleton finally ended his flight of passionate oratory by saying:

"Now then, they come as the apostles of another despotism. No longer is it the despotism of the crown and the court with its richness and glory. No longer is it the paranoia of kings and the emptiness of their allies and their war parties. The despotism that comes now, that is riding astride the invisible empire of

forces on which these gentlemen expect to ride into public service in this country, that is no longer a court or a crown, or a Potsdam or San Souci, or hereditary monarchy or a king strutting proudly in the thought that he had some inherited right to rule; it is a new despotism, Mr. Chairman, it is a new force; it is the despotism which will show as the despotism of oligarchy or the mob instead of the despotism of the kings. It was against the despotism of a king that our constitutional liberties were established.

"Our father said: 'A plague on your house, whether the power shall rise from below by those who attempt to enslave the minority or the majority of the country by compacted force, or whether it shall be claimed to have come from above.'

"That intolerable condition of hereditary kings, wherever it came from, was guaranteed against by our fathers; it is the blessing of our institutions; it is the finest attribute of government of any nation since the world began, that we are guaranteed against that invasion of force and the destruction of our liberties by the Constitution of the country.

"And these very men pretend that they took the oath upon their lips to support that Constitution, when we will show that by everything they have said, and they have said some things; by everything they have pledged, and they have pledged some things; by everything they have acted, and they have acted some things; and by everything they have done, they are in league with the forces of dishonor and violence, which are pledged to the destruction of that country which you and I and every loyal American revere.

"Now, Mr. Chairman, I say that the charges are complete and sufficient to answer every purpose for a legislative body to find out whether these men are entitled to sit in it. I say that the charge is brought

under the amplest provisions of the law and within justifiable and extensive precedents. I say the whole matter is a question as to whether we come to grips now, and whether what we say is true or not, and let everybody answer freely and to the end that justice may be done."

Mr. Littleton's address was greeted with loud applause from the audience, many members of which apparently agreed with his sentiments.

Directly after Mr. Littleton concluded, Mr. Hillquit, of the defense, was on his feet. He showed signs of deep resentment. With the House preserving a tense silence, Mr. Hillquit's voice rang out to all corners of the Chamber.

"Mr. Chairman," he said, "before my associate, Mr. Stedman, takes up the reply to the arguments made by Mr. Littleton, I desire to make a very brief statement in the nature of a personal statement bearing on a reference made by Mr. Littleton to something I said yesterday. I think it is important to have it rectified. Mr. Littleton quoted me as having said yesterday, that what is treason to-day, may become the law of the land to-morrow. He added very eloquently and effectively: 'It will become the law of the land if the traitors be allowed to violate the law,' with the inference that it is the duty of this committee, or this Assembly, to see to it that those whom you regard as traitors shall not be given a part in the writing of the law of this State; and it was this statement of all statements which invoked applause in this House, to the everlasting shame of those who participated in the demonstration, for years and years to come; for I maintain, Mr. Chairman and gentlemen, that there was no more reactionary, no more un-American statement ever made in a representative Assembly than this statement made by Mr. Littleton."

Mr. Littleton interrupted: "Is that a correction of my statement?" he demanded.

"It was," Mr. Hillquit replied.

Mr. Littleton demanded, "I want to know if I made any misstatement of your statement. Did I not quote you correctly?"

"You have absolutely misconstrued its spirit," said Mr. Hillquit. "You may consider that as you please. You have drawn conclusions. I have stated just as you quoted me."

At this point, Mr. Littleton, his face flushed, advanced towards Mr. Hillquit, and shouted:

"Mr. Chairman, I am not going to have any statement on this record, as to whether I stated the truth or not, any question as to whether I stated the truth or not."

To this Mr. Hillquit calmly replied, "I admit, Mr. Littleton, that you have quoted me absolutely correctly." The House applauded. "I say further that I have quoted Mr. Littleton correctly."

Mr. Littleton broke in again: "I did not say you had not quoted me correctly."

But Mr. Hillquit was not to be put down by the threatening manners of Mr. Littleton. He pursued his argument:

"There was a time, I believe, when a few Americans, one I believe, named Patrick Henry, one Thomas Jefferson, and a few more, uttered the doctrine that this country, or these colonies, should be independent from the constituted sovereignty, England. It was treason, Mr. Littleton, in those days. It was treason in the sight of all Tory statesmen and politicians. It was treason to the majority of the people, and, Mr. Littleton, if we had proceeded as you wanted to proceed, then if these men had not been allowed to have a voice in the legislative assemblies or in the councils of the

nation, this glorious country, whose flag you so frequently wave, would now be an insignificant colony of England.

"There was a time when a certain William Lloyd Garrison proclaimed the doctrine which was absolutely revolutionary, absolutely treasonable, in those days—the doctrine of depriving a substantial class of property, of sacred property, in slaves. It was treason, and they were called traitors. There were very eloquent attorneys for the vested interests in those days also. If those characterized as traitors had not been allowed a voice in our government and our institutions; if they had not been allowed to voice their 'traitorous' policies and philosophies, chattel slavery would still disgrace this country to-day.

"Now, we have a right to hold our opinions about the welfare of this nation and every nation, no matter how anybody else, no matter how our opponents, consider our views.

"Just as those that I have mentioned preached in other times political freedom and against the imposition of slavery, so we are teaching to-day economic freedom, emancipation of the working class, and of the whole community. It sounds treacherous and traitorous to you. Maybe it does. But it is our good right to hold those doctrines, and you are not our judges any more than we are yours."

Pointing a finger directly at Mr. Littleton, Mr. Hillquit concluded:

"What we want you to do is to say, and say it in your own way, whether or not you claim the right to dictate our political conscience or not and it is on that that we want arguments. Remember, gentlemen, at all times the 'Star Spangled Banner' is a beautiful and inspiring hymn, but it is not a legal argument in

a case of such grave, tremendous and vital importance as the one presented to you."

Mr. Stedman, for the defense, made reply to Mr. Littleton, and was followed by Judge Sutherland, of the prosecution. The latter ended his short address by the plea: "Let us have the opportunity, sir, to present our evidence."

Chairman Martin, true to form, wished "the record to show that the motion to dismiss on the grounds of insufficiency of the papers is denied."

The echoes of his speech about the "invisible empire" had hardly died away when Mr. Littleton, who had pleaded so eloquently for liberty "as a free American to go where he pleased," now announced that he would have to ask to be excused from further service because he was due at the trial in Michigan of United States Senator Newberry. Having done what he could to point out the justice of unseating the five Socialists, Mr. Littleton now felt it his duty to go to the defense of a millionaire politician, whom his State had accused of corrupt practices and illegal methods in procuring his election to the United States Senate.

The Chairman had the habit of denying all motions and all the requests as made by the defense, but he promptly granted Mr. Littleton's request, saying: "The record may so state."

The spectacle of Mr. Littleton, having assisted in the proposed permanent unseating of the five Socialists, none of whom was accused of any personal offense against the law, rushing off to Michigan for the purpose of preventing the unseating of a man charged with gross violations of the law, and since convicted, appealed to many persons in the audience as amusing, and considerable quiet laughter was heard. The more simple-minded spectators, particularly those who ap-

plauded his remarks, seemed shaken in their faith in the sentiments expressed by his patriotic outburst.

Having seen all their motions denied, the Socialists now faced their accusers and demanded a bill of particulars stating specifically what they were charged with.

Mr. Block, for the defense, insisted that it was a matter of common right for every criminal before he proceeded to trial to have his accusers state definite charges against him. Only in that way could he prepare his defense, and in no other. The Socialists demanded nothing more than the right accorded to the commonest criminal, he said. They wanted to know when and how they had advocated any change in the form of government or any reforms in our institutions by force and violence. They insisted that they could not possibly be expected to prepare a defense if they were constantly to be surprised by the prosecution constantly bringing in new matter.

Mr. Block's motion was forceful, fair, and appealed to the sense of justice of every one in the house. During Mr. Block's argument, the Chairman showed signs of uneasiness. He knew what he was expected to do, and yet as a lawyer he recognized the justice and legality of the demand. His decision in denying the motion was indirect and foreshadowed the "fishing expedition" in which the prosecution was about to resolve itself. He said:

"I can see that you are bound by the hard and fast rule of a legal proceeding, compelling a bill of particulars, by which the whole investigation would be confined to such narrow channels that it could not give the desired results to every one."

CHAPTER VII

THE PROSECUTION'S "EVIDENCE"

In introducing the evidence upon which it hoped to convict the five Socialists the prosecution made the world its field. It attempted to make all authors of Socialist literature co-conspirators with the five Assemblymen. Every man who had ever uttered or written a view upon any social or political question that clashed with the views held by the prosecution was placed, so to speak, on trial with the Socialists. In its endeavor to procure material that would prejudice the case of the Socialists, the prosecution ranged from Moscow, Russia, to Rochester, N. Y.; from the utterances of Lenine and Trotsky, in 1920, to the conviction of John Most, the anarchist, some twenty years ago, the only connection of which with the Socialist case was the fact that Mr. Hillquit was Most's attorney. Counsel for the Committee brought forth works obtained from obscure book stores and produced volumes issued by unknown publishers; they produced proclamations and platforms which have been distributed by the hundred thousand to prove the "secretive and conspirative" works of the Socialist party; they introduced into the record the utterances of soap-box orators and the writings of forgotten commentators on Socialist party tactics, dating back years before the accused Assemblymen had even become members of the Socialist party; in fact, not content with "evidence" bearing upon the activities of the Socialist

party in the United States, they actually introduced a pamphlet published by the British Socialist party dealing with religious questions, and sought to fasten its contents upon the five accused Assemblymen.

On the admission of witnesses under oath, of all witnesses in fact, none of the testimony which they gave had ever been communicated to the Speaker or to any one else connected with the prosecution until after the suspension had taken place. As the trial proceeded it became plain that the Speaker had not had a scintilla of evidence at the time he urged the Czarlike action that threatened the republican form of government itself. It became evident that after the suspension had been consummated, the Speaker had used all the resources of the Empire State to procure evidence which would justify his course of procedure.

With the introduction of evidence and the arrival of witnesses, the House was honeycombed with spies and detectives. This was also true of the hotels where the defendants were lodging. Neither they nor their counsel could go out without being trailed by spies. All this was at the expense of the State.

The first witness introduced was a policeman from Rochester, New York. He testified that he had bought a little red book from a man named Miller who was selling literature in that city. The prosecution placed much stress upon the color of the cover—red. Anything of a reddish, scarlet or crimson color to their minds seemed indicative of blood, violence, and rapine.

In fact, at a later time, Senator Elon R. Brown, for the prosecution, in an attempt to fasten the "advocacy of violence" upon the five Socialists, referred to a speech by Eugene V. Debs, in which the latter, after being presented with a bouquet of crimson flowers by a little girl, had praised her and her gift by comparing the flowers to the "spring-time of revolution." The

Senator dramatically demanded to know: "What could Debs have meant by that statement?" And then he explained it himself: "Why, he meant BLOOD!"

A translator in the employ of the Lusk Committee was placed upon the stand. At the very outset, counsel for the defense strenuously objected to the introduction of a booklet not written by any one of the five members, not distributed or sold by them, and not revealing that they had ever been apprised of its contents or approved of by them. It was pointed out that these five men should not be held responsible for what any author may have written on any subject and sold in any bookshop.

To this, Mr. Stanchfield, for the prosecution, laid down a theory concerning the introduction of evidence which was as remarkable as it was novel. He stated this theory as follows:

"EVERY PAMPHLET, EVERY DECLARATION, EVERY SPEECH, EVERY STATEMENT OF EVERY MAN WHO IS AFFILIATED WITH OR BELONGED TO THAT PARTY, NOT NECESSARILY IN A TECHNICAL SENSE OF BELONGING TO IT, BUT EVERYBODY WHO UPHOLDS THOSE CLAIMS, WHO SUPPORTS THOSE PRINCIPLES, WHO STANDS UPON THAT PLATFORM, IS BOUND BY THE SPEECHES, THE SENTIMENTS, THE WRITINGS, THE BOOKS, THE PUBLICATIONS OF EVERY OTHER MAN AFFILIATED WITH THAT ASSOCIATION, WHETHER THEY WERE PRESENT AT THE TIME, WHEN IT WAS MADE OR WHEN THEY WERE UTTERED, OR WHETHER THEY WERE ABSENT."

Chairman Martin, considering this theory sound, ruled in favor of Mr. Stanchfield's contention. He repeated the slogan which later was to become almost

monotonous during the rest of the trial: "Well, let it in for what it's worth."

This phrase became a by-word in Albany during the trial. It became the habit of men in the street to say to each other in passing, apropos of nothing, "Well, let it in for what it's worth."

The red booklet was therefore let in, and the translator was permitted to read his English translation. Mr. Hillquit, for the defense, then demanded the original booklet. It proved to have been printed in Yiddish. It was found that the alleged "correct translation" consisted only of those parts and extracts which would serve the prosecution's purpose. Counsel for the defense, in looking over the booklet, found that it consisted simply of a discussion of two theories prevailing within the Socialist movement, one advocating the "dictatorship of the proletariat" as a means for the attainment of Socialism and the other "constitutional methods."

The introduction of this booklet was intended to be the prosecution's opening sensation, but it proved to be a boomerang.

On cross-examination, the witness admitted that he was in the employ of the Lusk Committee. He was asked: "What were you told when you got the booklet?"

He answered: "Just simply to look it over, and use my own judgment as to it——"

Mr. Hillquit interrupted: "As to what?"

"As to translating what was vital," was the witness's reply.

"As to translating what was vital, and for what purpose?" asked Mr. Hillquit.

"For the purpose of submitting it as evidence," said the witness.

"For the purpose of submitting it as evidence against whom?" the attorney asked.

"Against Socialism," was the witness's confused answer.

"Then you were given this pamphlet by a representative of the Lusk Committee with the general directions to translate such portions that would serve as evidence against Socialism?"

"Yes, sir," was the witness's prompt reply.

This admission was received with a buzz of comment on the part of the spectators. The newspaper correspondents began their stories for the next day by calling this part of the prosecution's evidence a "frame-up."

Mr. Hillquit finally asked: "Then you were looking for such portions as would support the contentions that Socialism preaches violence, is that it?"

"Absolutely," was the witness's emphatic reply, to the great amazement of Chief Counsel Stanchfield of the prosecution and the members of the Judiciary Committee.

Many other witnesses were then called to the stand, but the star-performer, the thriller of the trial, was a young anæmic-looking girl, Ellen C. Chivers, of Brooklyn. The entrance of this witness was dramatically staged.

Up to now, the sensation promised by Speaker Sweet and his trained troupe of publicity agents had not materialized. The Speaker saw that he could not hold the recalcitrants in line and prevent them from demanding the reseating of the Socialists unless he produced the promised evidence. Therefore, the entrance of this young lady witness was of importance. Twice before her actual appearance, Mr. Stanchfield loudly demanded to know whether she was in the Chamber. The crowded house became all-expectant as to who Miss Chivers was. Finally the lady was "found." On her taking the stand, Mr. Stanchfield, be-

fore she had uttered a word, said in paternal fashion:

"Speak up as distinctly as you can, because the men that are on either side of me are interested in what you say. First, how old are you?"

The girl in a childish voice replied that she would be eighteen next month. She said she was a stenographer in Manhattan and lived in Brooklyn. She testified she had known Mr. Solomon, one of the accused Assemblymen, by sight, since 1917. She had heard him speak, she said, on the corner of Ninth Street and Sixth Avenue, Brooklyn.

The corner that Miss Chivers referred to is situated in a strong Catholic neighborhood and is surrounded by one of the most conservative populations in the city of Brooklyn.

Asked as to the time when she heard Mr. Solomon speak, Miss Chivers in a monotonous tone, replied that she "judged about the early part of April or the first part of May, 1917." Mr. Stanchfield then asked what it was that attracted her attention to Mr. Solomon. She replied:

"I remember that in the summer of 1917, about the latter part of April or the first part of May, that there was a detachment of soldiers came to Ninth Street and Sixth Avenue for the purpose of calling for volunteers, and they asked Mr. Solomon if they might borrow his platform for that purpose. Mr. Solomon replied: 'Lend you my platform? Can you borrow my platform? Huh, the gutter is good enough for you.'"

A hush fell upon the house. It seemed that the long awaited sensation had come.

Mr. Stanchfield, in a stage whisper, then tenderly addressed the witness: "Now, was that all that he said at the time?"

The girl's reply was:

"He said, 'If we had our way, there would not be

any one who would ask the Socialists if they might borrow their platform to call for volunteers.' He continued to say, 'I would not let you wipe your dirty feet on it.' "

"Did he give up the platform to this man?" asked Mr. Stanchfield.

"He did not," said the witness.

"What happened after that conversation took place?" she was asked.

"The officer in charge of that detachment," said the witness, "spoke from the jitney on which they had come, and told them to obtain the number of recruits they could and went their way."

The girl's assertion that a detachment of soldiers, a month after war had been declared, had quietly accepted such an insult from a Socialist speaker and had then "gone their way" evoked astonishment on the part of the spectators. They were visibly affected, whispering among themselves and exchanging glances.

After a pause, Mr. Stanchfield resumed: "Now, at a later period, a band of music came along?"

"There was," answered the witness.

"Was Mr. Solomon still speaking?"

"Yes."

"What, if anything, did the band do?" asked the lawyer.

"The band struck up the tune to the 'Star Spangled Banner,'" replied the witness, with emphasis.

"And what then occurred?" queried the chief counsel for the prosecution.

Here the witness drew herself up, took a long breath, and said with a flourish:

"Mr. Solomon turned up his coat collar, put down his hat, and pulled it over his eyes, spit on the American flag and sat down."

On cross-examination by Mr. Stedman, the girl then

admitted that she had spent the whole Sunday previous at the Prince George Hotel, New York City, talking to two members of the prosecution's legal staff. Under further questioning, Miss Chivers admitted that several hundred persons were present at the time she declared Assemblyman Solomon had expectorated on the American flag, including three policemen. She declared that the police were just in front of the Assemblyman at the time. None of the policemen made any protest, she testified. She said that she had not said anything about Assemblyman Solomon's actions from the time she alleged it had been committed up to the time that she wrote to Speaker Sweet, a few days after the suspension had taken place. On further questioning the witness declared she would be eighteen years old within a month, but at the time Assemblyman Solomon desecrated the flag, in April or May, 1917, she believed she was "nearly seventeen years old." Her memory on this point was fixed. She said she was a member of the "American Anti-Socialist League" of Brooklyn, which she joined in 1918.

When Miss Chivers left the stand, her departure from the Chamber was not quite as dramatic as her entrance.

Later, a captain of the New York police force and a patrolman, both of whom had been present at the meeting referred to by Miss Chivers, testified that Mr. Solomon had never said what he was charged with saying, or done what he was charged with doing.

If it was intended that Miss Chivers was to be the star-shell for the prosecution, there was now brought in a person whom they deemed to be nothing less than a heavy gun. He was Peter W. Collins, a lecturer hired by the Knights of Columbus for the purpose of opposing Socialism. After qualifying as an "expert," Mr. Collins was asked to explain certain passages in

the Socialist Party documents adopted at their regular convention. Mr. Collins "explained" numerous lengthy passages from such Socialist documents to the entire satisfaction of the prosecution. He was given wide latitude as to the nature of his testimony.

At one time when Mr. Stedman of the defense objected to the alleged quotation of such passages from the Communist Manifesto as not binding upon the five Socialist Assemblymen, the Chairman promptly ruled that such extracts were of interest to this trial, because the opinions of Karl Marx, the author of the Communist Manifesto, were those in which these men believed. But at another time when Mr. Collins was asked by Mr. Stedman to explain "surplus value" as understood by Marx, the Chairman relieved the embarrassment of Mr. Collins by ruling: "We are not interested in that old man, Marx, or in his ideas of forty years ago."

Mr. Collins' text as regards Marx was David Goldstein's book. Mr. Goldstein is well-known as a Catholic convert and paid speaker against Socialism.

On cross-examination, Mr. Collins explained that his expert knowledge of Socialism came from his intimate acquaintance with "thousands of Socialists." His knowledge of the Socialist attitude on religion and marriage came from his contact with "hundreds of Socialists in the lobby of the Rand School at New York."

For example, Mr. Collins quoted from the last paragraph of the Communist Manifesto so as to make one sentence read: "Let the ruling classes tremble at a Socialist revolution."

Mr. Stedman jumped to his feet, demanding to know if the word "Socialist" was actually in the paragraph just read. The witness replied, "No, sir, every one

knows that Communism and Socialism is exactly the same thing."

But Mr. Stedman replied, "I did not ask you that. I was asking the integrity of your reading."

Mr. Collins was on the witness stand for three half days, and the prosecution learned all about Socialism from this witness. Mr. Collins did not at any time claim any personal acquaintanceship with any of the five Socialists under suspension, nor did any of them know him. He was put on the stand simply to establish an alleged "state of mind" on the part of the accused Assemblymen.

The range of Mr. Collins' testimony may be judged from the last question, which Assemblyman Cuvillier, who earned the reputation for himself during the trial as being the "unsilenceable Assemblyman," asked whether the witness knew where Victor L. Berger, the Socialist Congressman-elect, was born. To the answer that he thought Mr. Berger was born somewhere in Austria, Mr. Cuvillier said, "That's all, that's all," and turned from his chair with a triumphant glance at the audience.

Of the numerous witnesses called by the prosecution, some were the defeated opponents of the five Assemblymen in the previous election, others were members of the National Security League, and still others were members of New York City's police force who testified that some of the Assemblymen had taken part in strike activities.

The audience in the Assembly Chamber which included citizens from Albany and near-by towns, which at first had been openly hostile, became more and more friendly as the prosecution developed its case, with the result that by the time the last witness for the accusers had stepped down from the stand, they were asking for Socialist literature.

CHAPTER VIII

THE DEFENSE OPENS—THE SOCIALISTS AND THE LEAGUE OF NATIONS

On Monday, February 17, the defense opened its case. Public interest, which had fallen to a low ebb on account of the dry and tedious nature of the testimony introduced by the prosecution, was now raised to high tide again. The Assembly Chamber again became crowded to capacity. The newspaper correspondents who had left came back. The trial once again took on an appearance of life and interest.

The first witness called by the defense was Morris Hillquit, its chief counsel. Direct examination was conducted by Mr. Stedman.

Mr. Hillquit's appearance on the witness stand was a surprise to the prosecution. It was highly pleasing to the audience, which by now had become eager to hear something authoritative concerning Socialism. Even counsel for the prosecution appeared deeply interested. They left their accustomed seats and drew up chairs close around Mr. Hillquit, with the intention of not missing a word. In fact, Mr. Hillquit was, by virtual unanimous consent, given the center of the stage. For three days he kept the stand, his testimony becoming more like the remarks of a professor addressing his class than a witness called in a trial involving a political struggle.

Mr. Hillquit qualified as an expert witness on Socialism, on Socialist theory, and on the status of the American Socialist Party in the Internationale. No question was raised as to Mr. Hillquit's right so to

speak, because of his long experience in the Socialist movement. He was one of the founders of the Socialist Party of the United States, he served for a long time as International Secretary, he is the author of a number of books on Socialism and the Socialist movement, and since the creation of that office, has been chairman of the National Executive Committee of the Socialist Party. He testified to his ability to read and speak several different languages, including English, French, Italian, Russian, German, together with some Spanish and Dutch. He spoke very clearly and concisely and was listened to with the keenest attention.

Mr. Hillquit gave a clear exposition of the workings of the various Internationales of the Socialist parties of the world since 1864. On this point, he made it clear that the Internationale was not in the least the romantically devilish "Invisible Empire" that the prosecution had attempted to make it appear. He explained that the various Socialist parties of the world enjoy absolute autonomy within their respective territories and are not bound in any manner by the rules adopted by the Internationale. Each country pursues policies and tactics suited to the political and economic conditions prevailing in each country at the time.

After describing the various phases of Socialist philosophy, the witness was asked by the Chairman, Mr. Martin, to explain the attitude of the Socialist Party on the League of Nations.

Mr. Hillquit replied, "It gives me exceptional pleasure to answer that."

"Not as great pleasure as to hear you," remarked Mr. Conboy, of the prosecution, graciously.

Mr. Hillquit then began:

"Mr. Collins's statement that the Socialists are opposed to the institution of the League of Nations is

absolutely false, because, if anything, the Socialists pride themselves upon being the first ones to formulate and to demand the institution of a pure league of nations. Socialists to-day are enthusiastic adherents of the league of nations idea and philosophy. But they are utterly opposed to the concrete program of the so-called League of Nations adopted at Paris. They are opposed to that so-called League of Nations because they are in favor of a true League of Nations. The Socialists' idea of a League of Nations is, briefly speaking, this:

"The office of the League of Nations, if it is to be a real League of Nations, is to do away with wars among nations; and consequently the composition, the machinery, the entire make-up of the League must be directed toward that end, that is, the abolition of wars. That means, in the first place, that such a League of Nations, by its Constitution, should proceed to abolish the principal causes of wars among nations. By that we mean that the causes of war among the different nations have undoubtedly been very largely commercial. That is not said by way of reproach, but by way of statement of indisputable fact.

"I may mention, by the way, that in his very latest pronouncement upon the subject, President Wilson has taken the same stand with reference to the last war. Now, these causes are the following: In every advanced nation, the dominating or capitalist class reaches a point where the resources and facilities of their own country are insufficient for their economic or commercial development. All countries, with very few exceptions, need raw materials, all of which they cannot get on their native soil. They, therefore, must have access to raw materials in foreign countries, usually less developed countries. In order to do that, they embark upon a colonial policy, that is, try to con-

quer and hold colonies and monopolize the products of such colonies for themselves.

"They also strive to secure certain special spheres of influence. For instance, China is partitioned—a certain part is for the English sphere of influence, a certain part is for the French sphere of influence, a certain part for the Japanese sphere of influence, and so on.

"Then also, they must, of necessity, have facilities to make investments abroad after they have exploited the best facilities at home. That is why we have in foreign parts concessions for railroads and other public works, and so on.

"Then again, as our present industrial system develops and grows, imports and exports, foreign trade and foreign markets are an ever increasing important factor. That means that nations must have outlets to the sea. They must have a sufficient number of ports. If they do not, they are hampered, and they strive to acquire such ports. In the transportation of commodities and merchandise, the control of the sea, or the freedom from control, is highly important. The great waterways of the world, such as the Kiel Canal, the Straits of Gibraltar, the Suez Canal, the Panama Canal, the Bosphorus, and so on, are of tremendous importance; so that a League of Nations, in the first place, if it is to establish a condition of affairs which will do away with the necessity of wars, must do away with this incentive to rivalry among nations.

"Nor is that all in this competition among various advanced nations and among capitalist classes in those nations. There is a constant intrigue—so-called diplomacy, secret diplomacy, each nation trying to get advantage over the other nation by secret treaties, by preferential terms of all kinds. All this should be abolished in order to have a true League of Nations.

"Then again, the fact that there has been in Europe,

and outside of Europe, a number of oppressed nationalities striving to regain their independence, has been a fruitful source of wars in the past—at any rate, a great contributing force. That, of course, would have to be eliminated in a proper League of Nations.

“Then, likewise, the system of competitive armaments—I mean both land and sea—is another source of wars among nations; and finally, there is an absence of any organization to dispose of quarrels among nations peacefully.

“So that a League of Nations, to be properly constituted and actually to have the power to do away with wars, would have to be based upon a program which was pretty aptly—though not completely—formulated by President Wilson in his late lamented fourteen points. Or, as it was more specifically and more circumstantially mentioned, in the program of the British Labor Party. In other words, it would have to be an association of nations, a league of all the nations peopling the world, without exception; it would have to be a federation, or league, of every nation, large or small, in Europe, Asia, Africa, Australia, or any where else in the world.

“That league would have to be based upon a certain definite constitution, an international constitution, if you like, which would first, say, internationalize the great waterways of the world—neutralize them—make them accessible to all. There is no reason why any nation should appropriate any part of the ocean for itself. It would have to be followed by the internationalization, if you like, or at least permission to use, the important ports of the world; so that, for instance, a large country like Russia does not find itself bottled up and shut off from commerce or intercourse with the rest of the world.

“It would have to do away with the ownership of

one country by another, the abominable system of colonies. It would have to do away with the system by which a strong country can go into Africa or Asia and take hold, by force of arms, of a defenseless, large and undeveloped nation or people, and say, 'You are my subjects. You are my colonies. We will take your wealth—your natural wealth. You will take our products, and you will not trade with anybody else.' Colonies would have to be internationalized, or at any rate, the open-door policy would have to be declared for all.

"As far as duties are concerned, those that discriminate in favor of one nation as against another certainly would have to be abolished as a very fruitful source of war.

"Then aside from that, the principle of self-determination, of which so much has been said and about which so little has been done, would have to be incorporated in the League of Nations. Every nation, or every nationality, should be given the right to determine for itself what form of organization—what political form of organization and what political affiliation—it should adopt; or whether it should adopt none and develop its own independence.

"Secret diplomacy would have to be absolutely abolished, as being probably the worst sore in international relations. Armaments would have to go, for as long as there are to be millions upon millions of professional soldiers and standing armies that drain all the resources of the country—each one having an eye to his neighbor to see whether it is increasing its armament, and then following suit—so long will there be, of course, an incentive toward war. And finally, also, so long as a better and more civilized method of settling disputes among nations remains undevised, so long will wars continue.

"Now then, the present League of Nations, so-called, does not incorporate a single one of these elemental features. To begin with, it is not a League of Nations at all. It does not represent the nations of the world; it does not pretend to. It does not represent nations, but Governments. It takes the same diplomatic corps in different countries, the same cliques that have been involving the world in all these wars time and time again—it elevates them, lifts them out of their respective chancelleries, brings them together in one place, and calls them a League of Nations.

"The League of Nations, as formulated in Paris, is not to be composed of members elected by the different nations by popular suffrage; not even by Parliament. No! They are to be men appointed by the foreign offices, by the diplomatic offices in various countries. Now, of course, you can hardly expect the diplomats to abolish diplomacy; just as little as you can expect the capitalist class to abolish capitalism.

"But that is precisely what we expect them to do. We sent a lot of old diplomatic fossils, who have been responsible for more human misery than any other class of men in the world, into one room in Paris to devise a League of Nations—and they did. They perpetuated themselves and legalized themselves and described themselves as a League of Nations."

Assemblyman Cuvillier here put in a word. Throughout the trial, Mr. Cuvillier apparently suffered under a belief amounting to an obsession that Lenine and Trotsky, the leaders of the Russian Bolsheviks, were the authors of all the world's troubles and that they were the head devils to whom all prevailing iniquities might be traced.

He asked Mr. Hillquit: "Do you think Lenine and Trotsky and the Soviet government have adopted your idea of the League of Nations?"

"Yes, they have," said Mr. Hillquit.

"You think so?"

"Yes, I know they have. I will tell you about that a little later in detail."

Mr. Hillquit resumed by stating the concrete Socialist objections to the League of Nations. Said he:

"One of the Socialist objections to the League of Nations as constituted or formulated at Paris, is that it was not a League or organization of the peoples of the different nations; that it was not democratically constituted, but that it attempted to perpetuate the old diplomatic system in various countries under the name and guise of the League of Nations.

"The next objection of the Socialist party or parties to this so-called League of Nations, is that the administration of its affairs is not left in the hands of the nations who are supposed to constitute the League, or such an executive instrument as such nations may chose; but that it is left in the hands of a council of nine, of whom five are perpetually named. These five forming the majority of the council are the five principal powers on the Entente side in the war.

"Now, the Socialists reason that if a League of Nations is to have any real, vital function it must wipe out hatred between nations; it must wipe out all lines of demarcation between one camp and another camp. It must, at any rate, not perpetuate hostile camps among nations, and this arrangement by which the five principal belligerent powers on one side are constituted as the majority in the council of the League of Nations renders that council practically impotent under its terms. Excluding all of the rival camps, it is something that must of necessity defeat the hope of any League of Nations. Of course, sentiments and hatreds are strong now because the war was so recent, but the object of the League of Nations, nevertheless,

is to do away with national antagonism and hatred once and for all.

"Now, then, instead of doing that, national hatred and antagonism within this League of Nations are perpetuated. The belligerents on the Entente side become by themselves the League of Nations. The other side is excluded from its administration.

"Moreover, a more cardinal objection to the League of Nations is its one-sidedness; if you want to choose a somewhat stronger term, it's hypocrisy.

"We start upon the assumption that it is wrong to subjugate peoples. Our President has said, 'I believe that never again in the future shall peoples be bartered by us from hand to hand like chattels'; which means that the system of maintaining colonies—subjected countries—must go in a civilized world. Now what did our League of Nations in Paris do? They took from that a moral principle and applied it to Germany, saying, 'You shall not subjugate foreign peoples. We will take away your colonies.'

"But they did not do that to England, France or Italy. In other words, the thing morally reprehensible that is allowed to ourselves is denied to the other fellows. Our opponents must be good, but you may be bad. The same applies to every other cardinal provision; for instance, the provision as to disarmament."

Surprised by Mr. Hillquit's frankness, Mr. Conboy, of the prosecution, interrupted.

"May I ask you when you say, 'Our opponents must be good, but you may be bad,' whom are you referring to?"

"The Allies," Mr. Hillquit promptly replied. "We are part of the Allies."

"You incorporate the United States among them?" asked Mr. Conboy.

Mr. Hillquit replied:

"I incorporate all those parties who are responsible for the draft of the League of Nations as manufactured in Paris. I say they apply these principles to one side but do not apply them to themselves. For instance, the principle of disarmament, gradual and eventually complete, must be one of the main points of the basis underlying any League of Nations. The Paris conference has effectively disarmed Germany and Austria, Bulgaria and Turkey; and it was very well that it should have disarmed them, but when it came to themselves they did not do so. They provide that each country may maintain a necessary force, leaving it to themselves to determine what is necessary, taking into account geographical situation and so on. In other words, as far as applied to the Allies themselves, there is absolutely no attempt at actual disarmament.

"The same applies to the waterways. For instance, the Kiel Canal is internationalized. The Straits of Gibraltar, the Suez Canal, and the Panama Canal are not. The same applies in fact to every provision. The paradox of the entire situation is that it looks as if our representatives had got together in Paris for the purpose of creating ideal conditions among our enemies or late enemies, and leaving the Allies with the conditions obtaining before the war.

"The enormity of the present plan of the League seems to us Socialists—and when I say to us Socialists I base my statement on official declarations of Socialist parties here and everywhere and on international conferences as well—the enormity is that the League of Nations, of course, cannot be considered apart from the Peace Treaty. The Peace Treaty is just as much an organic part of the arrangement as the League of Nations.

"Now, by the Peace Treaty, we proceed in rear-

ranging the world in a certain way. First, we leave the main powers on our side in possession of all of the stolen goods, figuratively speaking—referring to the colonies—and then we impose certain very onerous conditions upon the other side. When we have done all that, we declare that this condition of affairs that we have created must remain so forever; for it cannot be changed except by unanimous consent of the council including the votes of the powers who have the advantage of having dependencies, colonies, and so on.

“Having proclaimed the abstract right of self-determination, for instance, we leave Ireland under the subjugation of England—call it subjugation, because the Irish feel that way. We leave Egypt and India in the same condition. And then the League proceeds to say that this condition cannot be changed; that if an attempt is made to change it, the entire world has to be reckoned with. In other words, so far from making it easy for oppressed nationalities to gain their independence, the League makes it more difficult. So it is not a step in the right direction, a step toward progress; but it is a step backwards.”

On cross-examination, Mr. Hillquit was asked about various phases of the Socialist movement, including the Socialist attitude on the war; about the St. Louis resolution; about the Chicago Manifesto; about the meaning of Social revolution; about the meaning of “mass action,” of the general strike, and of the party’s attitude toward and relation to Russia.

Mr. Hillquit answered all these questions in detail. He explained that the Socialists believed in full and unhampered self-determination in Russia as well as in Ireland, Egypt, India, China, and all other subject countries. He explained that Socialists were in sympathy with the heroic efforts of the Russian workers

and peasants in their attempt to establish industrial democracy.

The defense called to the stand the Rev. Dr. Norman Thomas, a clergyman, who testified to the matter of Socialism and religion. Mr. Stedman, for the defense, asked him this question: "Will you state your opinion as to the antagonism, if there is any, between Socialism and religion?"

"There is in my judgment, no essential antagonism whatsoever between them," Mr. Thomas replied. "As a matter of fact, the American Socialist party has specifically adopted a neutral stand on religion, taking the position that religion is a matter for the individual. That was done in 1908, and that particular act has never been repealed or altered in any way. It is my own personal belief, after much study, that the most effective way of carrying out Christian ethics would be in connection with the coöperative commonwealth, which is the goal of Socialism."

CHAPTER IX

THE COMMITTEE INSTRUCTED IN SOCIALISM—LEE AND BRANSTETTER ON THE STAND

In order to throw light upon the operations and workings of the Socialist Party and its scope of activity, Mr. Otto F. Branstetter, National Secretary of the Socialist Party in the United States, was called to the stand.

Perhaps the most striking part of Mr. Branstetter's testimony was the figures he gave refuting the loud assertions of the prosecution to the effect that the Socialist Party and its principal committees were dominated by aliens and alien enemies. He confounded the prosecution by asserting that at least seventy-one per cent of the present membership of the Socialist Party was native-born, and of the present National Executive Committee consisting of seven members, six were American born, the remaining one being foreign born but naturalized.

Mr. Branstetter showed, in addition, that so far from being an organization existing for the purpose of tearing the United States to pieces, that, on the contrary, all its activities had been devoted to constructive work. He revealed, moreover, that on a list of books on Socialism and allied subjects recommended by the National Office of the Socialist Party for general reading, there are many volumes which have no direct relation to Socialism and others which are opposed to Socialist theories.

Mr. Branstetter explained that the Socialist Party is made up of dues-paying members and elucidated its form of organization. He added:

"Outside of the regular political activities of the party it covers quite a wide field, because we are more than a political party. We are an educational organization, and as such we carry on extensive educational campaigns amongst our membership, the effort of the party being always to give our members and sympathizers a wide and thorough understanding of the principles of Socialism, and also of general knowledge where it is possible for us to do so; and in that field our literature covers every phase of Socialism on both sides of the subject. We desire that our membership shall be thoroughly posted and familiar with not only the questions of Socialism but of civics and government generally, and not with one-sided information, but knowing both sides and understanding both sides of the question."

On the subject of books listed by the Socialist Party for general sale, Mr. Branstetter, to refute the charge that the Socialist Assemblymen were responsible for the contents of all books dealing with Socialist theory, produced a catalog on which was printed the following resolution adopted by the National Executive Committee June 2, 1913:

"RESOLVED, that the placing of the name of any paper, publication or book on lists or catalogs sent out by the national office does not necessarily imply endorsement of such paper, publication or books, excepting when expressly stated."

On the matter of lending assistance to striking workmen, Mr. Branstetter explained that the Socialist Party does not attempt to interfere with the internal workings of economic organizations, but had frequently furnished relief during strikes whenever it

seemed to be necessary. He testified furthermore that the party had often undertaken to inform the foreign born elements in the working class upon the American conditions. Said he:

"The Socialist Party perhaps was the original Americanization party. We started naturalization schools and appointed naturalization committees in our state and local organizations as far back as ten and twelve years ago, and in furtherance of this work of naturalizing of the foreign-born, the national offices prepared and published a booklet, 'How to Become Naturalized.' We translated it into Finnish. In addition to those two languages, which we published and which were prepared by the party, we sold extensively Jordan's 'Naturalization Made Easy.' We carried that and now have it in stock in seventeen different languages."

Assemblyman Cuvillier, who had been itching to get in a question, now got his chance. "Have you got a school to teach them the English language and the Constitution of the United States?" he asked.

"The party itself does not conduct such a school," replied the witness. "Local organizations have conducted such schools, especially where there is a large foreign population, and our language federations have conducted such classes. Nearly all of them have conducted classes in English and Americanization."

But Assemblyman Cuvillier was not content to hear that classes had been instructed in English; he wanted to know whether instructions had been given in the "American language." Said he: "You spoke about that you have seventeen different foreign language associations and literature to make American citizens. Do you teach them the Constitution in the American language?"

"Yes," replied Mr. Branstetter. "We have some

books in English, besides those we publish, and the one we translated into Finnish ourselves has the English and Finnish in parallel columns on opposite pages. This is both for the purpose of giving the information and giving them a knowledge of the English language."

But the examining Assemblymen could not keep away from the subject of the Socialist Party's relation to strikes. Again and again the matter of industrial conflict came up. Assemblyman Harrington of the Committee asked: "I understood Mr. Stedman to ask you whether the Socialist Party advised men to strike. Was that the question?"

"I think that was not men, but unions," replied the witness.

"The Socialists go on a theory that strikes are generally proper and you help them out?" asked Assemblyman Harrington.

Mr. Branstetter's answer was: "We go on the theory that strikes are necessary, absolutely essential and necessary to the welfare of the working classes; that they have organized into labor unions, and having organized, while not desirable, it is necessary upon occasion that they strike."

But Mr. Harrington was still not satisfied. "So, they can always rely on the Socialist Party to sympathize with them and help them once they strike?" he asked.

The National Secretary's prompt reply was: "An organized movement, irrespective of political belief or affiliation of its members, a group of organized workers striking for the betterment of their conditions, can always depend upon the support and assistance of the Socialist Party."

When asked about the so-called alien membership of

the National Executive Committee, Mr. Branstetter answered:

"The Executive Committee now consists of seven members—six of them are American-born, one of them foreign-born and naturalized. Preceding committees were of the same general character. The National Executive Committee has varied in numbers at different times from five to fifteen. So far as I know, and I think I know, the composition of every executive committee since the organization of the party, there has never been an alien on the committee."

Questioned as to the states and areas where the Socialist Party is strongest, Mr. Branstetter stated, that the membership in Oklahoma outnumbers that of any other agricultural state, and that it had been and was the strongest Socialist state both in proportion to the membership and to the votes cast in relation to population.

Mr. Branstetter was questioned by Judge Sutherland about an expression he had used which the lawyer had understood as "the scum proletariat."

"No, I said the slum proletariat," said Mr. Branstetter. Asked to explain, he said:

"The slum proletariat is the proletariat resident in the slums of the industrial sections. There is an element of that slum proletariat—the lowest element, the vicious element, the criminal element, the pauper element—all of those elements form the lowest strata of society and are included in the slum proletariat; and my statement, I think, was that we did not reach, and never hoped to reach, those people. **THEY ARE NATURAL SUSTAINERS AND DEFENDERS AND UPHOLDERS OF THE EXISTING ORDER, BECAUSE THEY ARE DEPENDENT UPON IT, BECAUSE SUCH INCOME AS THEY HAVE, SUCH LIVELIHOOD AS THEY HAVE, DE-**

PEND UPON THE PRESENT SYSTEM. THEY GET IT THROUGH CHARITY, THROUGH VICE, THROUGH CRIME; AND, AS SUCH, ARE ADHERENTS OF THE SYSTEM AND SUPPORTERS OF THE EXISTING REGIME. Quite often—quite frequently—they even exist and carry on their means of gaining their livelihood by vice, or crime, or beggary, with the connivance, if not with the consent, of the police officials and politicians of the existing order; so that they are always aligned against the Socialist Party. We have never had their support and do not expect it. I think that is the substance of what I was trying to convey this morning.”

Mr. Sutherland then asked about the status of a man he had known, who fifty years ago had entered the largest store in his town as a check-boy. At the end, he said, he was employing thousands of people as head of the establishment. “Where did that man leave the working class and enter the capitalist class?” asked the judge.

“When he became an employer of labor and began to draw the principal amount of his income from the labor of others and not from his own individual efforts,” replied Mr. Branstetter.

“There came to be between him and those with whom he had worked up to that time, a state of enmity, of warfare, in your conception?”

“Maybe not a personal conscious antagonism on their part, but there did certainly arise a condition where their economic interests were in conflict; their interests were opposed to each other, and whether they were conscious of the fact or not,” was the reply.

Assemblyman Harrington, of the Committee, declared that it seemed to him that every man in the country had a chance to become wealthy if he wished,

competent to support his family, send his children to college, and so forth.

"It seems to me," he said, "your doctrine keeps your man down there and tells him he will always be a laboring man."

On this point, Mr. Branstetter said: "The possibility that large numbers of workingmen may enter the capitalist class does not alter the fact of the existence of classes. What we say, is not that any individual workman may never become a capitalist. If I, or any other member of the Socialist Party, should become a capitalist, that would not remove the objection to the capitalist system. The system is such that the overwhelming majority of the working class can never become capitalists, because one capitalist necessarily implies a large number of workingmen who are exploited, and it is the system we are opposed to and not the individual."

As to the difference between a worker and a capitalist, Mr. Branstetter explained that as long as a man draws his principal income from the sale of his labor, either manual or mental, he belongs to the working class; and when he draws his income from investments, from the ownership of property which other people have to use, he is a member of the capitalist class, even though he may continue to superintend or direct his factory or mill, and although he continues to do necessary work in the conduct of his industry. He declared that there is an inherent conflict between the economic interests of the employing class and the employed class. This conflict, he said, manifests itself in strikes, in lock-outs, and in other industrial disturbances. The wealth of great capitalists, he explained, came from their ownership of the means of production and not their superior business ability.

But Judge Sutherland objected: "If you have not

got the managerial ability, the business is not worth much."

"You can be an inmate of an insane asylum, and your trustees can hire a manager and you can draw millions," replied Mr. Branstetter.

Mr. Stedman put in a remark to the effect that Harry Thaw drew more in the asylum than he did outside.

"Certainly," replied Mr. Branstetter.

"That shows that it pays to be insane," commented Mr. Stedman.

The next witness examined was Mr. Julius Gerber, county secretary of the Socialist Party in New York, Borough of Manhattan.

After explaining how the Socialist Party put up its candidates in elections, Mr. Gerber was asked whether he knew of a case in which a person, not a member of the dues-paying organization of the Socialist Party, had filed a petition for election in the primaries as a candidate of the Socialist Party, in accordance with the State Primary Law.

"Yes," replied Mr. Gerber. He then made the startling statement that the person who had so filed a petition as a candidate of the Socialist Party was none other than Assemblyman Cuvillier, who at that moment was sitting in front of him as a member of the Judiciary Committee which was trying the accused Assemblymen, and who had distinguished himself throughout the proceedings as a rampant opponent of all that related to Socialism. Mr. Gerber went on to say that Mr. Cuvillier had filed his petition as a candidate for member of the Assembly on the Socialist Party ticket in the 30th District of New York County in 1916.

"Did Mr. Cuvillier decline the nomination for the

Socialist primaries in that district that year?" Mr. Gerber was asked.

"He did not," was the reply.

"Did his name appear on the primary ballot on the Socialist column?"

"It did."

"Did Mr. Cuvillier receive any votes on the Socialist ticket?"

"Two," replied the witness.

At this statement, a ripple of laughter spread over the Assembly Chamber.

Mr. Algernon Lee, educational director of the Rand School of Social Science and former Socialist member of the Board of Aldermen in New York City, was then called to the stand by the defense. When asked to state the attitude of the Socialist Party in regard to the ownership of private property, Mr. Lee answered:

"Socialists try to make it clear to the public that it is not the abolition of private property that is intended, but the abolition of such private property as gives to some of the people a control over the lives and over the opportunities to work and produce a living by which other people live. Private property used for the satisfaction of human wants,—let us say the home, furniture of the home and so on and so forth—belongs to one class, and we do not seek to abolish it. To another class belong those means of production—that productive wealth which is owned by some people and operated by others, yielding a profit to the owners out of the product of the workers, and it is to this type of private property that the Socialist platforms and declarations refer. Only occasionally—a shorthand statement, so to speak—is used to describe it. Can there be any confusion in the matter?"

CHAPTER X

THE SUSPENDED ASSEMBLYMEN ON THE STAND

More than four weeks had now elapsed since the opening of the trial. Meantime the State was paying for the heavy expenditures by the prosecution. The Socialists also had been put to an expense they could ill afford. During this period, the accused Assemblymen had been compelled to sit in the chamber listening to endless arguments and debates, but without yet having had a chance to speak for themselves. However, their turn came on February 4th.

The first of the five to be called was Louis Waldman, of the 8th District of Manhattan. After briefly sketching his personal career and record in the Assembly, he delved into the legislative history of his party in the Assembly of 1918 of which he was a member. He described the organization and the activities of the Socialist group of ten members for that year.

While admitting that the group acted as a unit on all Socialist matters, he denied the charge of the prosecution that that rule was "hide-bound." He declared that the Socialist rule regarding unity did not compel members of the group to vote as a unit when it was their conviction that they could not agree upon any given question.

"We decided in such an event to dissolve the unit rule, and such an event had happened in practical experience in legislative work," he declared.

When asked to cite an instance where the unit rule had been broken with the consent of all the Socialist members, Mr. Waldman replied: "One conspicuous case was a piece of legislation pending in this House, sponsored, I believe, by our worthy Chairman, Mr. Martin."

Mr. Waldman then explained that it was in connection with the repeal of the educational law known as the Township Law. On that question, he said, the Republican Party had been divided, one part of it led by Senator Elon R. Brown, then majority leader of the Senate. The other side was led by Mr. Martin. The Republican party, he related, was about evenly divided, and there was also a division among the Democrats, except that a majority of them were on one side. The division of the Socialist caucus, he said, was nine to one. On being asked as to the identity of the "one," he replied that it was himself.

"I believed that the Township Law ought to be repealed for reasons that I explained when I voted on the question," he explained.

Mr. Waldman then took advantage of an opportunity never presented to Socialist Assemblymen before, and that was to explain the constructive side of their work in the legislature. Heretofore the only opportunity they had enjoyed was to be the opposition. The steam-roller had never permitted their legislative measures to come up for careful scrutiny before the House. To the edification of the Judiciary Committee, of the Assembly members, of the spectators, and newspaper correspondents, Mr. Waldman then related the scientific methods employed by the Socialist group, in their attempt to discharge their duties as the servants of the people. He said:

"At the very first conference, we took up the Socialist Party State platform for the year 1916, which was

the platform upon which we were elected to office in the year 1917, there not being a State convention in the interim. We took the platform up for the division of labor, assigning to each member of the group that plank of the platform in which he was particularly qualified and interested."

"Was it the idea," Mr. Waldman was asked, "to cover all those platforms, pledges or planks by concrete legislative measures introduced by the Socialist members?"

"That was the idea," Mr. Waldman replied. "We adjourned with this mutual understanding, that each member who received an assignment for the preparation of legislative measures was to go out into the field which that legislation was supposed to affect, and study the matter, first from the literature published on the subject; second, by consulting experts best qualified to speak on the question; third, by personal investigations. The results of such investigations were then reported back to the conference. Then the conference took up, section by section, the proposed piece of legislation, and modified it or suggested new ideas.

"Again, the matter would go to the person in charge of that particular legislation, and the person would finally beat the bill into shape, then report it back to the conference for approval, and after it had been so approved, it would be introduced by the member of the group.

"The first bill that was assigned to me for introduction was a food and fuel act. The object of the bill was to relieve New York City in particular, and New York State in general, from a great fuel crisis which was coming upon the State as a result of the increasingly high cost of living of the necessities of life. The situation that existed at that time in the city was such that the children, particularly of the districts which we

represented—the working class section of the city—were undernourished.

“The school children and those children who were not yet old enough to go to school were being undernourished, by reason of the fact that the earnings of the family were not sufficient to meet the onrushing rise in the cost of living. The purpose of the bill was to bring relief to this situation.

“In the first place, I consulted all the reports that were available on the subject, rendered by committees or commissions appointed by the mayor of the City of New York, or the State Legislature. At that time, there were two reports particularly which were valuable in the preparation of the bill. One was the Weeks’ report, a report named after Senator Weeks of this legislature. Another one was the report rendered to Mayor Mitchel by George W. Perkins. These two reports were the latest reports on the subject. There were about eleven investigating commissions in the past seven years engaged on the question.

“I then consulted experts in the trade of production and distribution of food. I held hearings at which I called wholesalers, retailers, commissionmen, jobbers, subjobbers, warehousemen—I called them to my own home, and conducted hearings in the presence of some of the members of the group. They voluntarily appeared. They gave me their opinions in the matter; they gave me their experience; they told me the weaknesses of the present method of distribution; they suggested remedies out of their own experience.”

“About how many persons did you thus interview?”

“At least eighteen,” said Mr. Waldman.

“In the course of what period of time?”

“In the course of about a week.”

“Working practically continuously?”

“Working continuously all day.”

"Then what did you do?"

"Then consulted such legal talent as I could. I consulted these experts for the legal side and sociological side of the legislation. I then went out among the farms. I put in a week of traveling from farm to farm, to find out the complaints the farmers had to make. I was particularly struck to see from reports that the farmers were leaving the farm; that they refused to stay on the soil; that they refused to continue to produce; that there was inefficiency in farm production. I went particularly to milk producers; I wanted to find out what they were complaining of. They told me, and made certain suggestions to be embodied in the legislative act. I first reported in raw shape the material to the conference; they then delegated me to draft a bill, which I did, and it was subsequently approved by the group. This was on January 8, 1918."

Mr. Waldman then gave a summary of the provisions of the bill mentioned.

His testimony made it increasingly obvious that the Socialist Assemblymen had not come to Albany with the destructive purposes accredited to them by the prosecution, but on the contrary, had labored with a view of relieving distressing conditions in a constructive way. He explained that his food bill was "based on the proposition that the high cost of living is caused by three elements: First, inefficiency in production; second, inefficiency and waste in distribution; third, unnecessary profits to various groups handling the food, and so the bill provides for the relief or the settlement of these three problems. In the first place, it provides for the stimulation of production. The farmers to-day are compelled to pay excessive prices for food, feed, seed, fertilizer and machinery, paid to private speculators and private owners. Under the bill, the State would establish a series of department stores

all through the farming sections, where the farmers could buy these things at cost; cost to be construed as being the purchase price the State pays at the point where it buys, plus deterioration of the plant; plus whatever loss is incidental to the business; but no profit to be made on these things. It proposes to eliminate waste and chaos in distribution.

"The reports made by commissions of this House are that it costs more to transport a pound of food, when it lands at the port of New York, to the house of the consumer than it does to transport it from Buffalo to New York. The condition of distribution in New York is recognized by all investigators as chaotic and anarchistic. Under the provision of this bill, a system of terminal markets would be created, equipped with storage houses, with refrigeration facilities, in many cases with facilities to manufacture, to take care of seasonable and perishable goods. This would eliminate the losses and waste due to our present system of distribution.

"This bill also provides for the elimination of the middlemen, such as the jobbers, subjobbers, wholesalers, retailers, commissionmen, warehouse keepers, all of whom add a profit to every article of food that comes from the producer to the consumer. This would be established by the institution of a system of distributing stores, to be operated by the municipalities, where food and milk and all things necessary for the people to live upon, would be sold to the people at cost."

He explained that the bill had been killed in Committee; and that notwithstanding the continuous rise in the cost of living to this day, no bill had ever been reported out which in any measure would relieve the conditions responsible for suffering among all the people in the State, chiefly the workers.

He then explained, one by one, the nature of the

seventy-four bills which had been introduced by the Socialists in the Assembly of 1918. These bills related to social insurance; conservation of natural resources; conservation of human resources; radical improvements in the labor law; protection of workers against the perils of fire and machinery; shorter hours and a minimum wage; public ownership of public utilities; and other legislation tending to protect the workers in their right to grow and develop to the full dignity of manhood and benefiting the people of the State. All these bills, with the exception of a minor one, he declared, had been killed in Committee.

His frank criticism of the indifference and negligence of the Assembly to the welfare of the people, was received with astonishment by the Committee.

Mr. Waldman then referred to a speech he made in Brooklyn on January 7, 1919, a passage from which the prosecution had sought to use against him. That passage read as follows:

"To-day in Russia, they have founded a new state which is a state based upon the divine right of humanity . . . it says to the world, that the function of the state is not to be a mere policeman, to be the jailer and the judge, and the tax-collector and the conscript; but the function of the state is to organize the industries, the wealth, the resources, human and material, for the purpose of establishing things as they should be."

The prosecution had taken this to mean that Mr. Waldman had advocated a Soviet system for the United States. Another passage of the same speech about Russia which had provoked the ire of the prosecution was as follows:

"They said to a man, 'You either go to work or starve.' In America, the situation is reversed. The millions and millions who work are starved, and those

who do not work live on the luxuries of capital. Which do you prefer? Here is presented the problem: Shall the majority of people who work, starve? Or shall the few who do not work, starve if they refuse to work? The answer is very simple, and it is that the new state, the Socialist state, the Socialist conception of justice and right and ethics and morality, is that they who toil and labor and sweat and produce and make and create, shall enjoy the product of their own labor.

"If you commemorate the birthday of the Russian Revolution, if you revere your Russian comrades, if you applaud Lenine and Trotsky, if you believe in the worthiness of their cause, in the accomplishment of their work, then it is your duty to enter the Socialist movement in America, to make it more like Russia is to-day.

"We must choose between two alternatives: either Russia lives and conquers the world—not Russia conquers the world, but the present ideals and philosophy worthy of the Russian Government conquer the world—either that; or the ideals and philosophy of Gary and Wilson and Palmer, Lloyd George and Clemenceau are to conquer the world. Between the two, for my part, and for the part of thousands of Socialists now battling in America to-day, we choose to stand by the ideas and philosophy and program and principles of Lenine and Trotsky as those we approve."

Mr. Waldman was asked what he meant by "entering the Socialist movement in America to make it more like Russia is to-day."

He replied: "I meant it in connection with what I said preceding that phrase; namely, that those who work shall receive the full product of their toil. Those who do not work shall be compelled to go to work to earn their living. A situation in Russia exists where

those who do not work, by reason of ownership of mines and mills and factories and banks, are put to work; and if they are not willing to go to work, they starve. I allege that here we have a reverse economic condition: that millions who work, as a rule, starve; and those who do not work, live upon the luxuries. I say in that respect, I prefer the condition that exists in Russia to-day."

Mr. Hillquit concluded his examination by asking, "You stand for industrial democracy as against industrial autocracy?"

"That is my position," replied Mr. Waldman.

Mr. Waldman was kept on the stand for two and one-half days. During that time he was closely questioned by all the committeemen, and by Mr. Conboy for the prosecution. In reply to the insinuation that, as an adopted son of America, he had not shown his gratitude, Mr. Waldman replied that he was indeed grateful; that he was proud of America; and that he had endeavored to show his gratitude by taking part in the Socialist movement and the labor movement for the purpose of making them stronger, healthier, and more effective, that they might do the largest good to the greatest number of American people. His personal effort, he explained, had always been directed toward constructive work for the benefit of the country. By the country he explained that he meant the people; he did not mean the economically dominant or ruling class which always sought to identify itself as the country.

On cross-examination, Mr. Waldman was requested to state his position on war. He said he was opposed to all wars. He referred to an anti-enlistment pledge which he had signed in the latter part of 1916. Mr. Conboy of the prosecution wanted to know how Mr. Waldman could reconcile with that the oath of al-

legiance he had taken upon becoming a citizen of the United States.

"At the time these slips were being circulated," said Mr. Waldman, "the country was divided into two camps politically; one advocating military preparedness, the other opposing military preparedness. One side was trying to force the President of the United States to ask Congress to finance greater military preparedness; the other opposed that view, trying to keep the President in his original anti-military position. These were not small groups, but large movements, lined up on both sides. Those who were interested in establishing a larger army and a larger navy were circulating petitions, asking everybody to sign them, then forwarded them to the President, pointing out to him how many citizens of the United States demanded preparedness. The same was done by the other side. This was long before the United States entered the war.

"It was at a time when we maintained neutrality. It was at a time when the President made his campaign for reelection on the slogan "He kept us out of war," with the implication that he WAS going to keep us out. It was the time when President Wilson was elected against Charles Evans Hughes on that slogan. It was under those circumstances and even prior to this, that I signed this pledge. I do not concede that this pledge in any way, shape or form violates my oath of allegiance to the United States. I am ready to defend the United States and its institutions against enemies internally and externally, and I believe that those who advocated military preparedness, the arming of the nation to its teeth, are those who are leading the country to destruction and ruin. It is my conviction that those who advocate large military establishments in any country are the enemies of the country.

Civilizations in the past which have relied upon militarism have been destroyed by militarism. For these reasons, and with these convictions, I signed the pledge."

"Now," asked Mr. Conboy, "in this pledge taken by you, signed by you, after you had sworn that you would support and defend the constitution and laws and the United States against all enemies, foreign and domestic, you say that you pledged yourself against enlistment as a volunteer for any military or naval purpose in an international war, offensive or defensive; now, what do you mean by a defensive war in that pledge?"

"I had in mind," said Mr. Waldman, "the situation that existed in the world at that time. Every military country was pretending to fight a defensive war. With the German Kaiser and his whole military machine saying to his people that he was fighting a defensive war; with Czar Nicholas in proclamations telling the people of Russia that he was fighting a defensive war, with England and France insisting upon the same thing, I felt my position was sound and my name went down to that pledge."

Assemblyman Evans, a member of the Judiciary Committee, here interrupted, saying, "Did not you form a judgment as to which of those Czars or Kaisers were telling the truth or not?"

Mr. Waldman replied: "On this I shall say that this war was prepared by the social, economic and political forces operating for the past twenty or thirty years. Since the beginning of this century Europe has experienced six actual wars and four threatened wars. With such an experience in a period of twenty short years, I, for one, could not make up my mind that, had the Kaiser not done this or that, war would not have broken out. War was the logical outcome of the

military preparation in all camps; of the search for colonies in all camps; of the search for possibilities of investment in all camps; in the secret diplomacy in all camps, in the desire of bankers to seek opportunities to invest their money in all camps; any excuse would have been a good excuse for them to start this conflagration."

To the interminable questionings of the prosecution, and the members of the Committee, Mr. Waldman insisted that the Socialist Party always recognized the fact when war is declared, but reserves to itself the right to oppose war as it has opposed all wars in the past.

Assemblyman Charles Solomon of the 23rd District, Kings County, then took the stand. He stated briefly his personal career and explained the bills he had sponsored in the Assembly during his service the previous year. On cross examination, Judge Sutherland, of the prosecution's counsel, plunged into Mr. Solomon's war record.

"You openly supported the St. Louis resolution, did you not, in many speeches?" asked Mr. Sutherland.

"As openly as I found it necessary," replied Mr. Solomon.

"Did you not say here, when you were under the friendly examination of your own counsel, that you said openly that you supported the St. Louis platform?"

"Why surely," replied Mr. Solomon, "I said then and I say now that I supported the St. Louis platform."

"You do not want to edge away from that, do you?"

"No, I do not edge away from it," said Mr. Solomon emphatically.

Taking up another point in the St. Louis platform, Mr. Sutherland then questioned Mr. Solomon as to

the "false doctrine of national patriotism versus the ideal of international working class solidarity."

To this Mr. Solomon replied:

"I say that there is a false doctrine of national patriotism. I know it. I think I can demonstrate it, and I will do all in my power in the future, I hope, to teach the workers of this country that there is a false doctrine of national patriotism. I will not confine my conduct in negative action. I will at the same time endeavor to acquaint them with what I understand is the true doctrine of national patriotism, and I will characterize any doctrine of national patriotism which is in the interests of the preservation, augmentation of the income of vested interests and which sends the workers in this or any other country into bloody fratricidal strife—I will characterize such a doctrine of national patriotism as a false doctrine."

Judge Sutherland's next question was:

"When, as the result of those appeals to national patriotism, our boys enlisted and marched towards the shores and towards the camps, did the Socialist Party encourage them to follow their flag, or did they stand aside and wave the red flag and sing the Internationale?"

In reply Mr. Solomon declared:

"I never saw them stand aside and wave the red flag and sing the Internationale. I never saw them do anything to discourage them. I know they actively advised them to obey the law. I know many Socialists in my district who were heart and soul opposed to the war, went into service and went across and many returned, and some have not. Inasmuch as I believe the war to be a capitalistic war, I, with a heavy heart, registered and complied with the law, and if it were not for the fact that I have a wife and two children, I would undoubtedly have been selected and I

would have gone forth, obedient to the law, but believing all the time that my life might be sacrificed in the interests of vested interests here and elsewhere."

Quoting at length from the St. Louis platform, Mr. Sutherland wanted to know whether the Socialist position was that the American interest in the European war was instigated by predatory capitalists.

Mr. Solomon answered:

"I will say this, that I believe that given large capitalist interests with direct, pronounced, and overwhelming interest in a given war, that interest being an economic interest, you will have a powerful incentive to impel these capitalist groups upon a course which would express itself in propaganda to foment war, and once having succeeded in fomenting war—in a general sort of way, let me give you a little information along the lines that disclosures have been made in European Parliaments, and by European publicists to this effect: that there exist in Europe, international rings for the purpose of fomenting international rivalries and that these rings are directly and indirectly associated with persons who are profiteers in war goods before wars, during wars, and after wars, ammunition manufacturers on both sides. And if I have the time, I will bring here for the Committee, so it might go into the record if the Committee so desires, disclosures to that effect, by well-known publicists and parliamentarians in Europe."

Replying to the charges made by the prosecution as testified by Miss Chivers, Assemblyman Solomon flatly denied her accusation, saying, that if in truth he had spat on the United States flag, "I would not be here."

After being under fire for two hours and a half, Mr.

Solomon left the stand, and the final witness was called:

Assemblyman August Claessens, from the 17th District of Manhattan, took the stand. His appearance was the signal for much laughter in the Assembly Chamber. Mr. Claessens had enjoyed the reputation throughout previous terms of being a humorist, and his round, bald head, and genial countenance served to strengthen this belief. His short stature was in striking contrast to his two hundred-pound opponent, Senator Elon R. Brown, who did his best to trip the Assemblyman. For an hour and a half, the House was kept rocking with laughter.

He explained his various activities in his two years of service in the Assembly, including the hundreds of bills that he had voted for, and the hundreds that he had opposed because he was sure they were against the people's interests. He declared that of all the numerous bills he had introduced, designed to be of benefit to the people of the State, not one had been allowed to come out of Committee, or had been passed on the floor.

Assemblymen Orr and DeWitt, the two remaining unseated Socialists, were not called to the stand, inasmuch as no accusation had been made against them individually.

CHAPTER XI

THE SUMMING UP FOR THE DEFENSE— MR. HILLQUIT'S SPEECH

Soon after the testimony of the five accused Assemblymen had been completed, Mr. Hillquit entered upon his summing up for the defense.

He spoke for more than seven hours, and was listened to throughout with the keenest attention. His speech was afterwards characterized, even by opponents of the Socialists, as one of the ablest speeches ever heard in the Assembly Chamber. It was a masterful tying together of the many and diverse threads that had been allowed to run through the testimony introduced in the trial. It was not so much a political speech as a survey of the entire Socialist movement. It dealt not only with the matter at issue, but with history, sociology and economics. At its conclusion, Mr. Hillquit received congratulations from every side.

At the outset Mr. Hillquit referred to the extraordinarily wide range of testimony introduced concerning all subjects, some relevant, and some irrelevant, so that in summing up, counsel was confronted with about 2,000 printed pages, referring to almost every imaginable matter that could in any way be connected with the Socialist movement or ascribed to the Socialist Party.

After reciting the charges laid down in the resolution of suspension, he pointed out that a new and sup-

plemental charge had been made by the Chairman, Mr. Martin, in his statement at the opening of the trial.

"Here," he said, "for the first time the theory of a conspiracy is sprung upon us. In the original resolution these five members of the Assembly were charged with membership in a political party and it was claimed that that political party had rendered itself unfit for membership of a political community in the country by its conduct."

After referring to the "desperate lengths to which the framers of these charges went when they prepared the supplemental charges," Mr. Hillquit went on:

"The entire supplemental statement, inasmuch as it is supposed to be part of this proceeding, in so far as it is supposed to constitute a basis of additional evidence against these Assemblymen not in the charges, should be disregarded from the beginning to the end; should be thrown out of your minds and from your consideration, together with all the testimony based upon it.

"The charges made against us, the charges on which we were summoned here to defend ourselves before you, are charges formulated by this Assembly. If any additional charges were to be made against us, there was only one way of effecting it. The Assembly could amend or supplement its resolution. You, gentlemen of the Committee, could not do it. The agent can certainly not extend the authority conferred upon him by the principal. You have no legal right to add any charges. But, if there was, at least, a semblance of legality or propriety in those additional charges made by the Committee in the statement read by the Chairman, there certainly was none in the further additional charges made by counsel for the Committee; and they have made additional charges.

"It seems to be a general 'free for all' proceeding.

Here are five men, brought before a court on something or other. Everybody who feels like licking them or hitting them, goes on and does so.

"Counsel in submitting their so-called brief at the close of their case, I repeat, made definite and additional new charges against these five men. They are: first, that the provision contained in the national constitution of the Socialist Party prohibiting members of the party from voting for any appropriation for military or naval purposes or for war, is in conflict with the provision of the Constitution of the State of New York, which enjoins the Legislature to make annual appropriation for the maintenance of the militia; and that consequently that fact disqualifies these five men from taking seats in the Assembly. I am not going at this time into the merits of this contention. We will do that later, but I call your attention to the fact that this is distinctly a new charge, not contained in the resolution, not contained even in the Chairman's statement, but wholly invented by counsel for the Committee.

"Likewise, the charge that the Socialist Party has for its purpose the substitution of the Soviet form of government in the United States—that was not contained in any of the previous charges. That was discovered by counsel for the Committee; likewise, that the Socialist Party is an anti-national party; and finally, counsel for the Committee take it upon themselves to prefer, formulate and state specific charges of individual misconduct against these five Assemblymen. I call attention to the fact that when the resolution was adopted there was no such charge, or shadow of a charge, in it. But in order to conform the charges to the evidence improperly introduced, specific charges are made against each one of the five Assemblymen; and the learned counsel for the Committee even goes

so far as to suggest that these five men are guilty of a violation or violations of the Espionage Law, and should be convicted under the terms of the Espionage Law.

"To what extent counsel for the Committee have gone in the preparations and formulation of charges against these five men can be best judged by this: that they have had the hardihood to take up the records of these men in previous sessions of the Assembly and to make that a basis of criticism. If ever there was a sacred right recognized in the political fabric of our country, it is the untrammelled right of an elected representative to any legislature, State or National, to speak his mind freely and according to the dictates of his conscience, to vote and act upon all measures before him as an absolutely free and untrammelled agent. And our constitution specifically provides that the acts and votes of members of the legislature should not be questioned anywhere else in any proceeding of any kind.

"Nor is that all. Counsel goes so far as to make this charge with reference to August Claessens, that during his terms of office, he introduced affirmative legislation of an offensive character. Think of it! Have they come down to the point where a measure introduced by a member of your House or of any other legislative body—which to him we must assume, represents a measure of public welfare—that, not personal misconduct, not personal misbehavior, but a measure of affirmative legislation, subsequently happens not to meet with the approval of learned counsel for your Committee, is made a basis of a proceeding for their removal from the Assembly?

"I merely point that out to show to your Committee the length to which this modification of charges has gone, the piling of charges upon charges; and I

again respectfully repeat that with respect to all these new charges discovered by counsel for your Committee, they are not before you. You have no right to go into them. You have no authority from your parent body for it. You must disregard them and disregard all the evidence in connection with them. You know this proceeding otherwise will certainly set a precedent, a very novel precedent in the jurisprudence of this country.

"Imagine for a moment a defendant charged with larceny brought into trial. The District Attorney tries the case upon an indictment of forgery. The judge submits it to the jury upon the theory of ARSON, and perhaps the jury brings out a verdict of ASSAULT AND BATTERY. This is practically what you have before you, for the evidence, no doubt, in that connection would show that, even with all this latitude, with all this superstructure of various charges, the evidence is not confined to the charges.

"Now with reference to that evidence, there is one point I wish to make, and, gentlemen of the Committee, I wish to impress that upon your minds as strongly as I can. . . . The evidence so absolutely distorts the vision of those who read it as to the subject with which it deals, as to be absolutely worthless and worse. My criticism is based upon two points, not so much on the point that utterances, platforms, declarations and other statements of the party or certain individuals have been misconstrued or misread; that may happen; but there is another important point: the testimony is so one-sided as absolutely to blur your vision. Let me tell you what I mean by it.

"The Socialist movement, in its modern phases, is about 70 or 75 years old. It has produced a literature of hundreds upon hundreds of volumes in all modern languages. The Socialist movement in the United

States is almost half a century old. The present party is twenty years old. It has had numerous conventions, national, state and local. It has adopted hundreds of official documents of all kinds. Its press is large.

"You take, for instance, *The Call* alone, which has been cited here so often. It is a daily. There are 365 editions of it every year. It is in its thirteenth year of existence. Consequently it has published roughly about 4,500 numbers. Each of them contains an average of from four to five editorials or contributed articles. Consequently that paper alone has published about 20,000 different editorials, expressions and contributed articles. Now, this is only one paper.

"The Socialist Party at all times has had an average of about 100 papers, daily, weekly, monthly, in English and other languages, supporting its policies. Imagine how many statements of all kinds have been made. In its campaigns almost every member of the Socialist Party is a speaker, a propagandist. Millions of Socialist speeches have been made in this country within the last couple of decades. Now, here is my point: Every indiscreet statement that creeps into our literature, our press, or our public forum, every foolish, irresponsible statement—and such are bound to occur occasionally—are at once seized upon by our professional opponents, the anti-Socialist League, the National Civic Federation, etc., and are immortalized. They are transmitted from book to book and from paper to paper, and then all are collected and turned over, ready-made, to a Lusk Committee or any other committee that investigates great social problems.

"Learned counsel on the other side, I make bold to state, have practically every incriminating utterance of any kind ever made by the Socialist Party or any of its subdivisions or any of its members, or any of its ad-

herents, or of any one who ever called himself a Socialist. And what do they produce before you? Twenty, thirty, forty utterances, and they ask you to judge the character of the Socialist Party by these. What becomes of the millions, the thousands and hundreds of thousands of other expressions of the Socialist Party which are perfectly proper and which are not brought up here? Do you think you can get a real conception of the Socialist movement by reading these conglomerations, these collections of slip-ups, if you want, and nothing else? nothing of the whole literature, proclamations, speeches and statements of the Socialist Party?

"Imagine I am a foreign correspondent in the United States and I am reporting upon conditions in the United States. I am perfectly truthful except that I select my material. I don't care for marriages. I don't care for births. I don't care for parties. I don't care for ordinary politics. I don't care for the ordinary every-day life of the United States; but every crime, every murder, every assault, every lynching, every boycott, every political scandal, I report at once. In every case, I am painstakingly truthful. What conception will they get on the other side? Why, the United States is a country of perpetual war. There is nothing but crimes committed there. It is the most lawless nation existing.

"Would that be correct? No. Would they have a right to arrive at those conclusions upon a basis of this testimony before them? Yes. Is the testimony false? Not formally so, but actually it is. It is true in the dry word. It is a lie in its soul and substance all through. That is, gentlemen, the nature of the testimony before you.

"Think of it! To drag in here the one indiscreet article written by Victor L. Berger, in 1909, eleven years

ago, a man sixty years old, editor of a daily paper, writing day after day; he, once in a moment of caprice or whim, as it may happen, writes one article which makes him the butt of his friends. It does not represent him truly. It is not a very incriminating article, if you read it, knowing Victor L. Berger, but it contains some extravagant statements. Gentlemen, which one of you as a professional writer does not have one such slip-up on his conscience in a career of thirty or forty years of daily newspaper work? From that you are asked to infer not only that Victor L. Berger is a firebrand—and he is just the opposite—but that the party endorses and approves of that one little slip of his and that we stand for violent revolution.

“There is a man by the name of Perrin, who, perhaps indiscreetly, is engaged on *The Call*. He writes an article, a shocking article, I admit. We all admit it. We read it the next day, and the telephone wire of *The Call* begins to get busy. How does an article of this kind come to be printed in *The Call*? The man is fired, but the article is here, and it is asked of you that you make it a basis of decision as to the qualification, the eligibility, of these five men, who at the time were not of age, and who at no time approved of the article; because the Socialist Party distinctly disapproved of it.

“You produce every kind of gossip that you can possibly get. There is a man who ran against one of these men and was beaten by him. Naturally he is somewhat sore, and he has certain opinions about his opponent. He is allowed to testify as to them. Then there is another man who goes around, heckles speakers and gets answers. He makes no notes. The speeches are oral. Of course, he comes here and gives his version of it, and it goes in.

“Finally you call an ‘expert,’ an ‘expert on Social-

ism,' the only expert you gentlemen of counsel for the Committee have called. You know Socialism by this time is not a hidden mystery. It is a perfectly well-known subject. The libraries are filled with it. It is a science. It is taught in the colleges and universities as part of political economy. Whether you agree or disagree with it, it is there. You want authorities, non-Socialists. Why don't you call some one who has made a study of it; call the professor of any university, a non-Socialist who knows the subject—Professor Ely or Professor Cummings? Instead, there is a certain man, a professional anti-Socialist. He knows his Socialism from the various excerpts I have referred to and from talks to individual Socialists. He comes before you, and you ask him what is the Socialist attitude on religion? 'Oh, hostile!' How do you know? 'I spoke to thousands of Socialists about it!' And if you do not believe him, all you have to do is to call those thousands of unnamed Socialists in rebuttal!

"You might as well take a policeman who makes love to the maid of a great authority on geology and call him as an authority on geology, because he knows all the kitchen gossip of an authority on geology. That is precisely what Collins did. To all those who know anything about law, that is a joke. In a serious body of this kind, in a proceeding of this kind, to introduce these Socialist or anti-Socialist rumors as authorities when you could have had so many competent authorities, by no means pro-Socialist,—people who have made a study of it, and who have the proper qualifications!

"All that testimony has introduced ill-defined or non-defined charges; and we are now called upon to meet all of them indiscriminately."

After pointing out that many of the charges and much of the evidence produced had been irrelevant

to the issues involved in the proceedings, and that they were outside and beyond the scope of the Committee's authority, Mr. Hillquit then summarized the charges against the accused Assemblymen under eight main heads.

"First: that the Socialist Party is a revolutionary organization.

"Second: that it seeks to attain its ends by violence.

"Third: that it does not sincerely believe in political action, and that its politics is only a blind or camouflage.

"Fourth: that it is unpatriotic and disloyal.

"Fifth: that it is unduly controlled—or that it unduly controls—public officials elected on its ticket.

"Sixth: that it owes allegiance to a foreign power, known as the Internationale.

"Seventh: that it approves of the Soviet Government of Russia and seeks to introduce a similar regime in the United States; and, finally:

"Eighth: that the Assemblymen personally opposed prosecution of the war and gave aid and comfort to the enemy.

"I wish to call your attention at this time to the fact that the only charge against the Assemblymen individually, improperly introduced as we claim it to be, is the last or eighth charge. To this charge I leave my colleague, Mr. Stedman, to reply. Personally, I am concerned in this argument with the first seven charges. All of these charges, if you examine them carefully, are distinctly charges against the Socialist Party as such.

"In other words, it is the Socialist Party of the United States that is on trial before you. On its qualification to be a member of the political community of this country, your decision will depend. Hence, it is very important for your committee to know some-

thing more or less definite about this Socialist Party which is on trial before you.

"The first charge is that it is a revolutionary organization. This charge appears in the resolution of the Assembly itself, which recites that the Socialist Party at its national convention in August, 1919, did pledge itself and its members to the furtherance of the international Socialist revolution. Then also, there is your Chairman's statement in three specific forms: First, that the Assemblymen, with others, are engaged in a conspiracy to subvert the due administration of law; to destroy the right to hold and own private property honestly acquired; to weaken the family tie, which they assert is the seed of capitalism; to destroy the influence of the Church; that the platform of the Socialist Party calls for the complete destruction of our form of Government; finally that the Socialist Party is in favor of absolute substitution of minority for majority rule.

"We come thus squarely to the question: What is the Socialist Party of the United States? What are its aims, its objects and its methods?

"I think this is highly important for all of you to understand that, or at least our view of it. It would be somewhat too simple, almost childish, naïve, to describe the Socialist movement in this country, in every country in the world, a movement which has sprung up many decades ago, a movement which has proceeded and is growing and has now gone forward, a movement which is in full control of a number of very important countries of Europe—I would say it would be childish to ascribe it to the machinations, to the malevolence or malice, of a few agitators who just go out in order to create disturbances and to create a movement of opposition.

"A movement of such age and such achievements,

as well as dimensions, must have some more real, some more rational cause; and I believe that if the special legislative committee wanted to investigate into the cause and conditions of radical movements in this country—and your Committee also—and would start with this inquiry: ‘What causes, what produces, the Socialist movement here or elsewhere?’—you would come very much closer to a scientific, satisfactory and rational solution of the question confronting you.

“We Socialists differ somewhat from the other political parties in our first, and cardinal assumption, which is that organized government everywhere has for its primary object and function to secure the physical, mental, moral, and spiritual well-being of its members. We do not consider the Government as a mere policeman sitting over us and passing upon our daily quarrels. We believe the functions of the Government are more substantial, more vital; and in that we really do more than endorse, and perhaps extend, the very well-known declaration which the founders of this republic have made popular all over the world—that the object of every government and of every people is to attain and maintain the right to life, liberty and the pursuit of happiness.

“To us, these are not phrases to be recited glibly on the Fourth of July. To us, this declaration is a living truth. What we mean when we assert the right of the people to life, is the right of the people actually to live; not merely to breathe, but to have the means of sustaining and maintaining their lives; to have food, to have clothing, to have shelter, to have all the means to sustain modern civilized life.

“When we speak of liberty, we do not mean merely a condition outside of jail. We mean by it the actual political and economic independence; the freedom of

men from men; the equal freedom of all in so far as such freedom is compatible with the existence of organized government.

"And when we speak of the right to the pursuit of happiness, we mean the right—the concrete right—of every man, woman and child in this country and every other country, to life, to sunshine, to air, to enjoyment, to amusement, to the blessings of civilization; to the products of art and science. We mean by it the right to enjoy life as fully, as nobly, as the best members of our community are privileged to do. And starting out with these premises, we say that neither our Government nor any other modern government has at all achieved those fundamental objects or functions for which they have been organized.

"We say that every advanced country can to-day, at the present state of development, easily assure the physical and moral and mental well-being of every member of such country; that it can produce with modern resources all the food, all the clothing, all the necessities of life, so as not to suffer any one, any member, of the community to go hungry or to go in misery in his daily existence.

"Take our own country, the United States. Here we probably have the most striking illustration of this proposition. Here is a great and powerful country, 3,000 miles wide, 3,000 miles long, blessed with every element of natural wealth. The land is abundant, mostly fertile. It produces products of practically every clime, and produces them in abundance. We have inexhaustible wealth of metals and minerals and forests; we have coast lines on both sides from one end of the country to the other. We have ports, we have waterways, and we have an alert, active, capable, population of over 100,000,000, of whom the vast majority is capable, ready and eager to lend a hand in

the production of the wealth required for the sustenance of the life of the nation.

"We have developed the modern processes of wealth-production to such an extent that we can produce to-day ten times, in some cases 100 times, more than our fathers or forefathers could with the same effort. We have an industrial organization the like of which history has never known. If all this wealth, if all these resources, if all these great industrial factors had been scientifically, rationally, and reasonably organized, there is no reason in the world why there should be slums in any of our cities; why there should be under-feeding of children, an appalling child mortality; why there should be want; why there should be misery; why there should be those ghastly struggles for existence going on in the heart of this country day after day.

"But our industrial systems are not organized rationally. In fact, they are not organized at all. The people of this country, as the people of every country, do not own their countries, and that is the fundamental charge, the fundamental indictment, of Socialism against the present conditions. It is not the people of the United States—the one hundred million men, women and children who constitute the people—that own the United States.

"There is a tremendous stretch of land, a large slice of the surface of the globe, that should be the common heritage of all those who live on that land, but it is not. It has been parceled out, divided up into lots and plots, and has been turned over by gradual processes to a comparatively small number of landholders, who own the surface of the United States and by whose permission the rest of the people, who own no land, work.

"More than seventy per cent of the people of the

United States owe their ability to walk on the streets of the country, to live in the houses of the country, to special license which is given to them by the land-owning class. When we come to the natural wealth below the surface of the earth—the vast stocks of minerals, of metals, the stocks which a benevolent Nature has created in the course of many thousands of years, and upon which to-day we depend for our light, for our heat, for our energy, in production of wealth—we find another group, and a comparatively small group, of our fellow citizens who hold that as against the rest of the whole country and who say, ‘This is ours; the Almighty God has not meant the sources of life for the people who need it for their lives; no, the Almighty God has meant it for us to turn it into franchises, to capitalize it into stocks and bonds, to derive profits, and make our individual fortunes on it.’ So it is with the oil wells; and with the great arteries of trade and commerce and life in this country—the railroads; and so with our factories; with the marvelous machinery of modern production produced by the agency of many generations past as well as present—the natural heritage of all men. They are owned, they are claimed by a small minority, comparatively—a handful of the people hold it as against the rest of the country.

“The situation is this, for the majority of the people, the working class of the United States: they stand to-day, ready, willing, eager and highly capable of turning those natural resources, that raw wealth, into consumable products for themselves, their wives and children; to turn it into food; to turn it into clothes; to turn it into dwellings; to turn it into other necessities. They can do it, except that they cannot do it at this time without the use of modern implements of labor; they cannot do it without the natural resources, the

raw material. Between them and their lives stands that small capitalist class, which says: 'Hold on, this is ours, the land and the fullness thereof, the land and all above it, and all below it, is ours; and if you want to live, if you want to eat, if you want to work, you must first secure a license from us, and such license we shall not give you unless you stipulate to pay us a tribute; unless you stipulate to turn over to us for our personal profits a large and substantial portion of the product of your toil.'

"And the great masses of the American people, as is the case with the great masses of the people in every modern country, by permission of this small class of industrial autocrats they work or they starve according to the dictates of that class. If a time arrives when it does not pay the owning class to continue the industries of the country, they are not responsible to anybody for continuing them. They shut their factories, their mines and mills; they throw millions of workers out of employment, cause the direst poverty, because it suits their business ends. And the whole country stands there, impotent, powerless to interfere with this industrial autocracy; absolutely impotent to assert itself.

"And so we have all the special social evils of modern days, resulting from this condition; so we have the few millionaires and multi-millionaires in this country; and we have the millions and millions of men, women and children, whose whole life is one of toil and privation, deprived of all joy, all sunshine, all life, in the actual sense of the term. We have the class of the idle, who take pleasure after pleasure, without rendering any useful service to society; and on the other hand we have the children of the poor beginning their lives—their joyless lives—in the factories, at a tender age; growing up stunted physically, mentally

and in every other way, making miserable citizens, making a weak foundation for the hope of the future generations.

"Now then, we have made that indictment; we have made it more than once, but once in a while, we are met with this simplified statement, 'Well, if you don't like this country, what is there to hold you? Take the first ship and go elsewhere.' . . .

"An argument more silly and more immoral has never been advanced. I say 'silly' because it is not the United States alone in which these conditions prevail. They prevail in every modern country. Our complaint is not specifically against the regime or system of the United States. It is an indictment of our whole capitalist society.

"'Leave this country; go to a country that suits you better.' Just think of that argument, gentlemen. Suppose in this city of Albany, you have by misfortune a corrupt, incompetent administration on account of which you find your streams polluted, the sanitary conditions neglected, your health menaced, your existence poisoned. A number of citizens may get together and protest against these conditions, against this administration and its misdeeds; and this political ring or its adherents turn to such protesting citizens and say, 'Gentlemen, if conditions in Albany don't suit you, there are plenty of other cities in the United States. You may go elsewhere.'

"Suppose, to take another illustration, you and I and somebody else entered into a partnership in business, and have given our joint efforts to this business for years and years. At a certain moment, I, as one of the parties, discover that another partner of mine has been inefficient, perhaps dishonest, that the business is suffering, going to the bad, our joint interest being gradually destroyed. I try to introduce reforms in our

business management and methods, and the very partner who profits perhaps by his own dishonesty turns to me and says, 'If you don't like the way we conduct this business, there is nothing to hold you in this business of partnership; you can get out.'

"You would not consider this a good argument, and so exactly does the argument present itself to us. Bear in mind, once and for all, we take the position that America is ours just as much as it is yours; that America is ours just as much as it is that of any other class of persons or individuals in this country. These men here, these five Assemblymen under charges, come here as representatives of many thousands of workingmen who have given probably their youth, probably the greater part of their lives, to the enhancement of the wealth and prosperity of this country, to making it what it is, great and powerful and prosperous; these men have a right to say to-day that the wealth which they have helped create be equally or at least equitably distributed, and that the workers have a proper share of it and a proper share of life.

"They are not going to quit this country. They do not have to quit this country any more than you. They propose to stay. They propose to contribute the best that is in them for the advancement, for the benefit, for the betterment of this country, and also for the bringing in of a better, juster social system of wealth production and wealth distribution.

"Had it been merely an economic question, perhaps it would not have been so vital as it is now, but it isn't purely an economic question. It is much more than that. It goes to the very substance, to the very life nerve of our national existence. You see that these conditions, under which a small class owns the country and a large populous class works for it, have created what we have referred to here in the evidence

as a class struggle; and we have been foolishly charged with fomenting that class struggle.

"Do you know, gentlemen, we are the only political party that not only is not fomenting class struggles, but tries to eliminate all classes and all class struggles? But the fact of the matter is that, under present conditions, there is nothing but the struggle of classes in the country. You may not call it struggle; you may call it antagonism, but it is a vital antagonism.

"It is found throughout the entire field of our life and economy. It exists between employer and worker everywhere, whether it expresses itself in strikes or walkouts or blacklists, or not at all; or whether the personal relations between employer and employee are very bitter, or on the contrary very friendly. The fact of the matter is that the employer, under present conditions, must see to it that he makes proper profits, must see to it that he pays as little in wages as he possibly can, to get as much out of his worker as he possibly can. It is the law of present economics. It would mean economic extinction if he were not to follow it.

"The worker who has nothing but his labor power must, whether he wants to or not, see to it that he gets every dollar of wages he can; that he conserves his energy—his only commodity—as much as possible; and between these two opposing and different interests, there is, and must be, a constant conflict.

"There is a warfare between employer and employee; there is a constant competitive warfare between capitalists of different classes, and within each class separately. You know all about it. You know the history of our great financial and industrial institutions. You know how they have been built up on the ruin of smaller industrial concerns. You know how

they have been eating and devouring the smaller brethren.

"There is the same war between the worker and worker, because whenever, in times of industrial depression particularly, a job is open, there are hundreds of workers looking for it, each one eager to get it, each one—or most of them—having wives and children to support; each ready to take any pay so long as he is allowed the privilege of working and earning wages—underbidding each other, cutting wages against each other, and bringing children from their homes to work and to compete with adults; bringing in their wives into the factories to compete against the men—all because necessity compels them. But it is a war, nevertheless.

"And there is the same antagonism between landlord and tenant; there is the same antagonism between producer and consumer. It is not a uniform system operated for the benefit of all the members of the community. It is a system of war and violence, where each is engaged in war against all, and all against each.

"And in this war of interests, every class, every individual, of necessity tries to exert the greatest possible power in its, or his, behalf; and so it becomes that the capitalist classes, the most powerful classes, in order to maintain their supremacy, go into politics and see to it that their interests are in the control of the government in all its departments as much as they can. All we have been hearing and saying about political corruption and machinations in this country in the last decade—and many volumes have been written on the subject—have had their mainspring in this desire of the privileged classes to maintain their privileges against the people; and all the corruption of our schools and of our presses and of our public institu-

tions—of which there have been many and various public indictments—have had their mainspring in the same source.

“This is not a mere Socialist contention. No! It is borne out by the naked facts and conditions in this country. Only so far back as 1915 the Industrial Relations Commission—a commission appointed by the President of the United States—composed of men who may be considered more or less neutrals in the class war—at any rate not Socialists—found and published the following illuminating facts. Speaking of certain industrial communities dominated by corporations, they said: ‘In such communities, democratic government does not as a rule exist, except in name or form, and as a consequence there now exists within the body of our republic industrial communities which are virtually principalities, oppressive to those dependent upon them for a livelihood and a menace to the peace and welfare of the nation.

“The wealth of the country between 1819 and 1912 rose from \$65,000,000,000 to \$187,000,000,000, or 188 per cent; whereas, the aggregate income of wage earners in transportation and mining and factories has risen between 1819 and 1909 only 95 per cent. It was found that the income of almost two-thirds of these families was less than \$750 per year, and almost one-third were less than \$500; the average for all being \$721. The average size of these families was 5.6 members. Elaborate studies of the cost of living made in all parts of the country at the same time have shown that the very least that a family of five persons can live upon, in anything approaching decency, is \$720.

“It is probable that owing to the fact that the families investigated by the Commission were to a large extent foreign born, the incomes reported are lower on the average than for the entire working population.

Nevertheless, even when fair allowance is made for that fact, the figures showed conclusively that between one-half and two-thirds of these families were living in a state which can be described only as abject poverty.

"It has been proved by study here and abroad that there is a direct relation between poverty and the death rate of babies; but the frightful rate at which poverty kills was not known, at least in this country, until very recently, when, through a study made in Johnstown, Pa., the Federal Children's Bureau showed that babies whose fathers earned less than \$10 per week, died during the first year at the appalling rate of 256 for every thousand. On the other hand, those whose fathers earned \$25 per week or more died at the rate of only 84 per thousand. The babies of the poor died at three times the rate of those who were in fairly well-to-do families. The tremendous significance of these figures will be appreciated when it is known that one-third of all the adult workmen reported by the Commission were earning less than \$10 per week, exclusive of time lost.

"On this showing in Johnstown, these workmen may expect one out of four of their babies to die during the first year of life. The last members of the family to go hungry are the children, yet statistics show that in six of our largest cities from twelve to twenty per cent of the children are underfed and ill-nourished.

"Between one-fourth and one-third of the male workers 18 years of age and over in factories and mines, earn less than \$10 per week. From two-thirds to three quarters earn less than \$15, and only about one-tenth earn more than \$20 a week. This does not take into consideration loss of working time for any cause.

"The rich—2 per cent of the people in the United

States—own 60 per cent of the wealth. The middle class, 35 per cent of the people, own 35 per cent of the wealth approximately. The poor, 65 per cent of the people, own 5 per cent of the wealth. That is a telling story. Sixty-five per cent of the people—over 70,000,000 people of the United States—together own one-twentieth part of its wealth; and if you exclude the highest strata of these workers, if you reduce it, say, to 50 per cent, or a little more, that is, half of the people of the United States, you will be justified fully in saying that they own absolutely nothing in this world; that this country with its wealth, to which they have contributed by their toil, has not given them any return of any kind, and that they face the dread of starvation from day to day.

“This means, says the report in brief, that 2,000,000 people who would make up a city smaller than Chicago, own 70 per cent more of the nation’s wealth than all the other 108 millions of the country. Then to prove the extent to which concentration has gone, the report makes this interesting observation: there is at least one individual, one out of the 110,000,000, who owns approximately \$1,000,000,000 in wealth. The average wealth of the working people is \$400 per head. Hence, this one individual owns as much as 2,500,000 workers in the country.

“And bear in mind, gentlemen, that was the report in 1914, before the war. Since that time, conditions have become incomparably worse and the contrast very much greater. In that year, there were only 7,500 millionaires in the United States. To-day we count about 35,000, more than four times the former number. The cost of living since 1914 has more than doubled. Wages have not kept pace. The picture so eloquently given by this report of the Industrial Re-

lations Commission is rosy, is optimistic, as compared with conditions as they exist to-day.

"Now then, in view of that, the Socialist Party and the Socialist movement say that there is nothing wrong with this country, or its people, or the country or people in other advanced countries, except the industrial system which they live under.

"The Socialists propose, as a remedy for this evil, the nationalization of the country's principal industries. They say it is altogether wrong, it is immoral, to allow such a vital function as feeding the people, maintaining them in health, to be carried on by a group of irresponsible capitalists for private profit and aggrandizement, without any reference, without any concern, for the men, women and children who have to be fed day after day and who often die from malnutrition. We say it is an absolute wrong to allow the great industry of clothing, of sheltering the people to be carried on by individual capitalists or profiteers for their own private interests and pleasures.

"We say that this country, as every other country, has as its first concern to see to it that the wealth which an Almighty Providence has placed within their reach, which an industrious people has increased one hundred fold by their efforts, by their energy, through generations and generations of thinkers and inventors and workers—we say it is the duty of every self-respecting rational people, organized in a proper way and on a civilized basis, to take these life-sustaining agencies out of the hands of private individuals, out of the hands of speculation, out of the chaos of competition that rules and ruins at the same time, and turn it over to the people to organize it properly, to organize it rationally, scientifically, to organize it with a view eliminating the waste; to organize it with the view of producing the maximum of wealth and dis-

tributing it as equitably as possible among all of the people.

"This is the program of the Socialist Party. It is nothing we have adopted just here or within the last few years. It is the program upon which our party was founded many, many years ago. It is the program which has been underlying all our activities, all of our duties, ever since the Socialist Party existed. If you like, you may call that a revolutionary program. It is revolutionary, and in that sense, we, the adherents of that program, we Socialists, are revolutionists. We don't object to this term. We glory in it. And so long as the end sought to be accomplished by us is commendable, is for the welfare of humanity, we don't care how much you label it.

"But we ask you, gentlemen, and we ask those who framed the charges against us, since when has the term 'revolution' or 'revolutionary' become a term of opprobrium in a country which owes its existence to a successful revolution?

"Since when has the doctrine been proclaimed in this country that a change—a fundamental, a radical, a revolutionary change—in the mode of government, in the mode of life, is not permissible so long as the people wish to introduce it?

"There has been a very characteristic incident in that connection. You remember when Mr. Littleton opened this case in a very eloquent address, he took me to task for having said this: 'What is treason to-day may become the law of the land to-morrow.' And he said to you by way of warning, 'It will, if you let traitors write your laws.'

"It seemed to be an eloquent argument, but what is revealed is that my good friend Mr. Littleton and those of the same social and economic school with him have come to the point where they already consider the

fundamental law of this land, the constitution of this country, with its Bill of Rights and Declaration of Independence, as traitorous. They are ashamed of it; they discard it. Aye, they don't have the courage to repeat all of it. Mr. Littleton read from the Declaration of Independence—he read a portion of it. I shall repeat to you. He said, quoting, 'WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED EQUAL AND ENDOWED BY THEIR CREATOR WITH CERTAIN INALIENABLE RIGHTS, AMONG WHICH ARE LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS; THAT TO SECURE THESE RIGHTS, GOVERNMENTS ARE INSTITUTED AMONGST MEN DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED.'

"And he stopped right there. He stopped dead because he did not dare to read what follows; and what follows is:

"'WHENEVER ANY FORM OF GOVERNMENT BECOMES DESTRUCTIVE TO THESE ENDS, IT IS THE RIGHT OF THE PEOPLE TO ALTER OR TO ABOLISH IT AND TO INSTITUTE A NEW GOVERNMENT, LAYING ITS FOUNDATIONS ON SUCH PRINCIPLES AND ORGANIZING ITS POWERS IN SUCH FORM AS TO THEM SHALL SEEM MOST LIKELY TO EFFECT THEIR SAFETY AND HAPPINESS.'

"We are here to remind you that this eloquent sentence is a legitimate and organic part of our Declaration of Independence just as much as the part read by Mr. Littleton; and we say to you that we believe, sincerely believe, that the present form of our industrial system, our industrial regime, has become destructive of the very ends proclaimed as inalienable rights in our Declaration of Independence; that life,

liberty, and the true pursuit of true happiness have become impossible to-day under the prevailing and unequitable and iniquitous economic system; and we say that we have the right, and that we have the duty, to demand that this system, this pernicious system, be altered; that it be abolished, and that the people of the United States form a new industrial system, basing it upon such rights, upon such conceptions, as to them, the people of the United States—not Mr. Littleton, not counsel for the other side, not even you, gentlemen of the Committee, or members of the Assembly—deem proper, but the people, the people as a whole, deem proper.

“That is all there is to the first point or charge against us: that we are a revolutionary party.”

Having thus answered the first charge against the Socialist Assemblymen to the effect that they were members of a revolutionary party, Mr. Hillquit then took up the second charge, namely, that the Socialist Party, of which the accused Assemblymen were members, sought to attain its end by violence. In answering this, Mr. Hillquit ridiculed what he called “romantic notions” in regard to changing the fundamental forms of society by violence or conspiracy. He declared that the aim of the Socialist Party was to convert the majority of the people to its views. This point he elaborated upon as follows:

“The prosecution has sought to establish this point principally by inferences. I think I shall not be contradicted if I say that they have not read a single official party declaration or any other authoritative Socialist statement advocating violence as a means of attaining social ends. . . .

“Ours is a movement of propaganda. We are a minority party. Our object and ideal is to convert the majority of the people to our views. To hold certain

views and conceal them would be diametrically opposed to the methods and purposes of the Socialist Party. . . .

"Where there is a machinery for righting grievances, for changing of Governmental forms, we Socialists say that that is the method which we adopt. That is the part of our program. At the same time, we cannot blind ourselves to history. We cannot be blind to the fact that in actual practice revolutions, changes—fundamental, governmental and economic changes—have been accompanied by violence. We say that in most cases, the violence has come not from the victorious majority, but from the defeated minority. In most cases it has been forced upon the majority; I might say practically in all cases; and we have cited a number of cases to you.

"Now, we say the Socialist Party is not a party of non-resistance, and we say further, the hypothesis having been placed upon us, that if a majority of the people of this country were to vote for a Socialist change in the reform of government and the capitalist minority were to attempt by force to prevent them from coming into their lawful inheritance, we would repel or advise repelling such force by force. Did you expect a different answer? Would any American make a different answer? No. And that is all there is to the theory of violence in the Socialist movement, notwithstanding all these disjointed fragmentary statements that sometimes are made falsely, sometimes in the course of an impromptu speech, and sometimes perhaps in an ill-considered article. . . .

"Socialism, like any other national political program, can be realized only when its adherents, sympathizers and supporters are numerous enough to wrest the machinery of government from their opponents, and to use it for the realization of their program. Does that

look like a conspiracy to overpower the government of the United States and overthrow it by force and violence?

"But to make it still clearer: modern Socialists do not expect the social order to be introduced by one sudden and great cataclysm, nor do they expect it to be established by desperation and starvation. The Socialists expect that a coöperative commonwealth will be built by a disciplined working class, thoroughly organized, well trained, fully qualified to assume the reigns of government and the management of industries. Next to the education of the workers in the philosophy of Socialism, the prime task of the Socialist movement is, therefore, a political and economic organization. The Socialist movement of each country presents itself primarily as a political party.

"And again, the objective point of the Socialist attack is the capitalist system, not the individual capitalist. The struggles of the movement represent the organized efforts of the entire working class, not of daring individual leaders or heroes. The intellectual life of the working class is determined by the training of men and women constituting that class, and not by the more advanced conditions of a small group of it. A country may be educated, led and transformed into Socialism; but it cannot be driven, lured or bulldozed into it. The Socialist's conception of the world process is evolutionary, not cataclysmic. Socialism has come to build, not to destroy. This is the accepted position of the modern Socialist movement. . . .

"The accepted position, then, of the modern Socialist movement is, however, not to be taken as an assurance or prediction that a Socialist victory will in all cases—in all countries—come about by orderly and peaceful methods and will not be accompanied by violence. It may happen that the classes in power

here or there—that means in one country or another—will refuse to yield the control of the government to the working class even after a legitimate political victory. In that case, a violent conflict will necessarily result, as it did under somewhat similar conditions in 1861; but such spectacular and sanguinary outbreaks which sometimes accompany radical economic and political changes are purely incidental. They do not make the social transformation.

“Thus in England, the revolution which transferred the actual control of the country from the nobility to the capitalists was accompanied by gradual and peaceful stages, without violence or bloodshed. In France, the same process culminated in the ferocious fights in the great revolution of 1779; but who will say that the transition in England was less thorough and radical than in France? As a matter of fact, street fights do not make a social revolution any more than fire-crackers make the Fourth of July.

“Another point was tacked onto this proposition, namely, that we advocate mass action and the general strike. Mass action or mass petition occurs quite frequently in our phraseology. What we mean by it, gentlemen, is the opposite of what you impute to us. We distinguish between mass action and individual action. Mass action is organized action of the people. Political action is mass action. Organized strikes are mass action. Individual attempts, individual assassination, individual attacks, individual acts of sabotage, are not mass action, and we deprecate them. The mass action we have in view is the legal organized action of large masses in the community.

“As to general strikes, let me state our position. As a matter of history, the Socialist Party of the United States, together with the greater number of Socialist organizations in the world, has always consistently

rejected the idea of a general strike for political purposes; and our argument has always been this: that if we have a number of workers in a parliamentary country determined to the point of striking for a political reform, it is strong enough and numerous enough to cast its votes for such reform, and the strike becomes unnecessary. Either the working class goes to the limit in such demand, if it is right; and if it is right, we do not need the general strike. If it is not right, there will be no effective general strike.

"The first and only endorsement of the general strike method by the Socialist Party in the United States was contained in that proclamation in connection, I believe, with the U-boat warfare by the Germans. At that time, under special pressure, the Socialist Party declared its opposition to the war, not yet declared to be so strong as to sanction even a general strike for its prevention. Now, gentlemen, we maintain that a resolution of this kind, whatever view you may have on its political wisdom, was perfectly legal, that we had a right to adopt such a resolution. I shall say more regardless of the attitude of the Socialist Party on general strikes for political purposes; I will say that the workers of this country have such right, and that it is well that they should at least hold it in abeyance as a possible instrument in some cases, in very exceptional emergencies. . . .

"I will say that the general strike is very often used, has been used abroad, for the purposes of enforcing parliamentary action or political action, and I can well imagine such concrete instances now. Let me give you this hypothetical instance. A labor party is now being formed, at least in some parts of the country. Suppose the working men of any state got together and said: 'We want to form a party of our own; we are not satisfied with the way these representatives of the old

parties are legislating on labor matters. We want our own representatives to come into legislative bodies and to voice our demands, our aspirations, our sentiments. We want them to speak for us by our mandate. Suppose an election is held, and being confronted with all sorts of election frauds of the most brutal manner, they still manage to elect a few of their representatives; and those representatives come to the legislative body, and their working constituency is waiting and watching, hoping that there at last their own direct representatives will speak for them in the halls of the legislature; and suppose a big capitalist in the same legislature thereupon gets up and tells them, 'Look here, gentlemen, I don't approve of your program, of your principles, of your platform. Get out of my legislature.' I say this would be eminently a case where the workers would be justified in declaring a general strike until such time as their constitutional rights are actually accorded to them.

"I should not be surprised, if there ever arises a condition of this kind on a large scale, that that will be what will happen. We do not apologize for it. We have the right to safeguard the political rights of our constituents, and of the people, by every legal means without exception, and the general strike for such purpose is one of such legal methods.

"It has been recognized in every country, in every civilized modern country. I hope personally, the Socialist party hopes, that the occasion may never arise where it shall be necessary, but if it should, the workers have a full and perfect right to use it for the protection of their interest."

Mr. Hillquit then took up the next big point made against the Socialist Party to the effect that it is really a political party only in appearance; that as a matter

of fact, it does not believe in politics except as a "blind and camouflage." In answer to this he declared:

"Are the Socialists perhaps too much in earnest about their politics for the health and comfort of their opponents? I could not in any way consistently see the charge of the politics being a sort of camouflage. If an Assemblyman of the Socialist Party came here not to introduce a bill, but a bomb; if an Assemblyman of the Socialist Party came here not to debate, but to shoot; if he came here to commit acts of violence instead of legislating; if there had been any such record on their part, I could conceive of the justice of such a charge; but the very record of these men proves that they and the party take their tasks seriously, that they are a Socialist Party. . . ."

Mr. Hillquit then took up the charge that the Socialist Party exercises undue control over its elected officials. He discussed this as follows:

"You say in the former charge our politics has been a camouflage, that we are not a political party at all, and in the next charge you say that the Socialist Party is too much of a political party, that it dictates the policies and actions of its members elected to public office. The consistency of the two charges is not very obvious to me, but they exist and we shall discuss the second now—that the Socialist Party unduly controls public officials elected on its ticket. . . .

"All through the proceedings there have been eloquent speeches about the oath that the Socialist party members take to their organization and to their Internationale against the constitutional oath. There is not any oath being taken, nor has there been, by any member of the Socialist Party in any way. They merely subscribe in their application, to the ordinary natural—even implied—obligation to live up to the Constitution and principles of the party while they are mem-

bers of the party; and if they do not, they are thrown out. . . .

"In this very House, as in every other House, you recognize the existence of political parties, and their right to control the actions of their representatives. What is your majority leader? What is your minority leader? Are they other than instruments of the respective parties to influence and control the conduct of their representatives? Inasmuch as such control is not for corrupt purposes, but for legitimate political purposes, or the purpose of securing party unity in action, it is perfectly legitimate and we recognize it." . . .

Concluding his discussion on this point, Mr. Hillquit declared: "We recognize the fact fully and frankly, and we recognize it is a proper fact, and we say the Socialist Party above all other parties insists upon the right and the duty of the party as such, to see to it that its representatives live up to the pledges, to the promises, to the representations which we make in elections."

The next charge Mr. Hillquit discussed as one that accused the Socialist Party of being "unpatriotic and disloyal."

On this question he said:

"What has been proved, gentlemen, and what undoubtedly has been the fact, is this: That the Socialist Party has consistently, emphatically, and at all times opposed the war; that it was opposed to the entrance of the United States into the war; and that when the United States entered the war it was in favor of a speedy cessation of hostilities, of a speedy peace.

"We claim—I think we proved, and we shall revert to it again—that with all that, we at all times recognize that war is on; that war has been declared; that it has been legally declared, and that we submitted

and complied with all the concrete enactments of war legislation in every respect. We did not surrender our opinion—our sincere belief that the war was wrong, a monstrous wrong, and that every day of its continuance entailed unnecessary misery and privations upon our people. We voiced those sentiments. We voiced them because we maintained, and maintain that there is not an act of the Legislature . . . such even as a constitutional enactment or amendment, which intends to silence the tongues and stifle the thought of the people, to which the people must bow, not merely in the sense of practical submission, but in the sense of intellectual and moral submission against their open convictions.

“We say that it was never intended that this doctrine should ever be preached in this country. It was never intended upon the declaration of war, or any other great national emergency, that all thoughts of these great people in this great Republic should stop; all democratic institutions should come to an end, and that the destiny of 110,000,000 persons should not be placed in the hands of one individual, no matter how exalted. Such is not a democracy. It is the worst form of autocracy.

“We proceeded upon the assumption that it is not only the right, but the duty of every citizen in a democracy like ours at all times, and in connection with all measures, to use his best judgment, and if he honestly, conscientiously thought that a measure enacted was pernicious or against the interest of the country, of his fellowmen, that it was his right and his duty to do all in his power to have it righted, to have it changed, to have it repealed, to have it undone; and we had ample authority in all the precedents of this country for that general theory, that the greater the crisis the greater the duty to that, the greater the dan-

ger of expressing a position, the higher the call of duty to brave that danger. It is the arrant political coward only who supinely submits to what he in good faith considers a crime. . . . We had abundant authority in this country to hold this position. In fact, this was the American position; the position advanced against us now is a novel, un-American proposition. . . .

"We did not believe that civilization or the human spirit would be advanced by this war. We could see nothing but a colossal carnage brought on by the commercial rivalries of the people in Europe. We could see in it nothing but a cataclysm for human civilization. We could see in it nothing but the greatest blot upon human intelligence. . . .

"We said, holding views as we do, it is our sacred duty as citizens of this country, our sacred duty to our fellowmen, to protest against the war, to oppose it with every fiber of our existence, come what may, not only in the shape of disagreement, but persecution or prosecution, suffering of all kinds; and we say to you gentlemen, if any of you had held those honest convictions, and if you were true to yourselves, true to your country, you could not have acted otherwise. Now that the war is over and the entire world is quivering under the torture inflicted upon it, now that the war is over and ten millions or more human beings have been directly slaughtered, and many more millions killed by the ravages of epidemics, now that all Europe is in mourning, now that the greater part of Europe is starving, succumbing, bringing up a new generation of anaemic, under-nourished weaklings, now that we behold the ruins of our civilization, we Socialists say we have absolutely no reason to repent our stand. . . .

"It is, gentlemen, with this attitude of mind in view that we formulated our proclamations, formulated our programs. We have been asked on this stand by elo-

quent counsel on the other side, time and time again, 'You say you submitted to the law.' 'Yes, yes, we do.' 'Did you do anything more than the law compelled you to do?' 'No, we did not.' How could we? We regarded the law as an inhuman law. We regarded the law as an inhuman institution. We submitted to the concrete will of the majority as good citizens of a democratic republic, but to go out of your own free will to in any way contribute to what we consider nothing but a senseless insane slaughter of our fellow men, how could we consistently do it? How would you, or you, or any of you act in the face of a law which you would consider absolutely obnoxious? You would comply with it. You wouldn't do more than that. You couldn't, if you remained true to yourself. . . ."

Mr. Hillquit then took up two more accusations against the Socialists, the first of them to the effect that the Socialist Party owed its allegiance to a foreign power known as the Internationale; and the other that the Socialist Party approved of the Soviet Government of Russia and sought to introduce a similar regime in the United States.

Concerning the first of this pair of charges, Mr. Hillquit said:

"That has been embellished and decorated somewhat by my eloquent friend, Mr. Littleton, who, among other things, charged that they (the Socialist Assemblymen) gave their allegiance wholly and solely to an alien, invisible empire, known as the Internationale; and also that it is the alien state to which, before the five members had entered into this Chamber, they had pledged their support, honor and allegiance, going even so far as to say that it was through the instrumentality of this Internationale that the Socialist Party of the United States received orders from Lenine and

Trotsky and carried them out in this country. This was somewhat supplemented by counsel's brief, who charged the Socialist Party with being an anti-national party.

"In the progress of the evidence, the invisible empire—that mysterious body—has become more and more invisible until at this time, looking through the evidence, you cannot see it with a magnifying glass! . . ."

Mr. Hillquit explained that the Socialist Party is not anti-national, but international in the sense that its aims and ideals are the same in every country. He declared that the party's affiliation with an Internationale does not disqualify it from being represented in a nationalistic legislature. He pointed to Catholicism as being an international organization.

"I can think of nothing more impressive to show the danger of this line of attack," said the speaker, "than a little paragraph in a letter written by my good friend and sturdy opponent, a thorough non-Socialist, a good American citizen, the Reverend John A Ryan, when he said:

"Possibly my desire to see your personal cause triumph—meaning this cause before you—is not altogether unselfish. For I see quite clearly that if the five Socialist representatives are expelled from the New York Assembly on the ground that they belong to and avow loyalty to an organization which the autocratic majority regards as inimical to the best interests of the State, a bigoted majority in a State—say, in Georgia—may use the action as a precedent to keep out of that body regularly elected members who belong to the Catholic Church, for there have been majorities in the Legislature of more than one Southern state that have looked upon the Catholic Church ex-

actly as Speaker Sweet looks upon the Socialist Party.' ”

With regard to the Soviet Government of Russia, Mr. Hillquit explained the attitude of the Socialist Party as follows:

“We do not seek to introduce a Soviet system of government in the United States. We recognize the right of every people in every country to choose their own form of government and to adopt it if it suits them as a moral right. We recognize besides, the economic and social fact that the government of every country must correspond to the economic, political and historic conditions of that particular country; that a form of government that may suit one country may not suit the other country; and we say, just because we recognize this verity, we hold that the Soviet form of government may be good for Russia, and that the parliamentary form of government seems good for the United States. We do not attempt to force a form of government upon the United States which is not suitable to the genius of its people. . . .”

He insisted that the Socialist Party had a right to urge a policy upon the United States that would induce it to leave the peasants and workers alone to work out their form of government in their own way. He explained that the party sought to make the American creed in actuality what President Wilson proclaimed in theory—self-determination for all peoples.

In concluding his summing up, Mr. Hillquit invited the Assembly to consider the peculiar situation in which it found itself. Said he:

“You gentlemen belong to different political persuasions. Your views, your stations in life, your surroundings, your education, your preconceptions—all of that predisposes you against our views and we know it. But we say that does not matter. What about it?

This Assembly and every representative body in this country is instituted for the purpose of harboring, of uniting, the representatives of different and conflicting social views, with the sole provision that those who can command a majority for any measure, rule on this measure at that particular time. If you take it upon yourselves, largely or solely because you disagree, and strongly disagree with the Socialist Party, its program and policies, to bar these five representatives of the party, then what you will have said in effect is this: That we will tolerate none in this Assembly except those whose views and platforms are approved by us—in other words, Republicans and Democrats. . . .

"Where is your compass in this wild political navigation? Where is your stable, definite, solid test, by which to uphold popular representation? If there was anything at all to illustrate and prove conclusively and concretely the danger of the method of departing from constitutional qualifications, the danger of inscribing into the law new tests, new qualifications based upon your concepts of what is right and what is wrong, it has been, I say, this proceeding more than anything else.

"I expect, of course, that in the consideration of this case and in arriving at your conclusions, you will bear that point in mind that we made at the outset particularly. I cannot see how you can possibly refuse to seat these five men and at the same time comply with that part of the Constitution which specifically prohibits from adding any additional test or qualification for members of this House, other than those contained in the Constitution and recited in the oath of office. In order to unseat these men you will have to reverse yourselves in your unanimous decision in the Decker

case, in which you expressed your position very soundly and at any rate very clearly.

"Throughout all these weary days of testimony we have been trying to be helpful to the Committee; we have not withheld anything in our possession. We have freely submitted to your Committee; we have answered all questions; we have stated our creed; we have stated our platform; we have stated our methods. We have given you all the facilities to arrive at a proper conclusion.

"Let me be frank with you. If we had been guided only by a question of political advantage, we might have sabotaged this proceeding a little; we might have goaded you a little into a decision against us; for from a political point of view, I cannot see anything that would benefit the Socialist Party more than an adverse decision. For remember, we are a rival political party. Your political mistakes are our political gain. Your political ruin will be our political upbuilding, and we cannot conceive of a more flagrant political mistake, of a more flagrant political and moral wrong, than the unseating of these five men.

"But, gentlemen, do you also recognize the higher and more important principle involved in this proceeding, the principle greater than any possible immediate political advantage? We recognize that in trying this issue, you are making political history. For the first time since the existence of this Republic, aye, I will go a step further and say for the first time in any country of parliamentary government, has a case of this kind come up, a case involving the outlawry of an entire political party, a case in which the majority political parties may take it upon themselves to bar a minority party because they strongly disagree with such minority. . . .

"Like a blow came this action of the Speaker of the

House in connection with these five Socialists. It was overstepping the limit somewhat. It has caused a reaction somewhat, and to that extent it has done good. But let me say to you, gentlemen, it is absolutely inconceivable that in times of normal, rational conditions, any such proceedings would have been undertaken. Socialists have been Socialists of the same kind as they are now, all the time, many and many years. They have been elected to various offices and they have been allowed to hold office. These very members, or a majority of them, have been in this House, last year and the year before, after their attitude on the war had been made public and was generally known, after these various manifestoes dated from 1916 had been adopted, after these regulations written in 1909 and 1908 had been published. Their seats were never questioned. Attempts were made on the part of one or another individual to bring about their unseating. It was frowned down and squelched by the very same Speaker of the House. And I say it is only morbid, political psychology which prevailed in this country a short time ago that made this proceeding possible. Gentlemen, this will pass. We will return to normal conditions. We will return to normal mind. We will return to the condition of an actual free and democratic republic, with toleration for all political opinions, so long as they meet on the common, better ground of the ballot box and constitutional government. And I say, if in the meantime you should unseat these Assemblymen, while these normal conditions will be restored, that stain upon our democracy will never be washed off, never be removed. That precedent once created will work towards the undoing of the entire constitutional, representative system so laboriously built up and upheld in this country. . . ."

CHAPTER XII

THE PROSECUTION SUMS UP—SPEECHES BY MESSRS. CONBOY AND BROWN

Mr. Hillquit's speech for the defense was followed by an address by Mr. Martin Conboy, who began the summing up for the prosecution. Mr. Conboy is tall and heavy. His manner during his address was cold, cynical, and ponderous.

In the beginning he emphasized what had already become abundantly apparent—that it was the Socialist Party that was on trial and not the five unseated Assemblymen. Said he:

"It is not the intention of counsel for this Committee to do other in the course of the discussion of this evidence than to refer to such portions of it as are contained in the official pronouncements, proclamations, manifestoes, declarations, platforms and writings of the party itself, and the statements of its accepted leaders.

"There will be observable a studied intent to keep directly within this character of testimony, and if it brings the conviction to the minds of the Committee and the minds of the members of this Assembly, that we, who have given it the closest attention and scrutiny, believe that it will, THESE MEN WILL SUFFER FOR THE OFFICIAL PRONOUNCEMENTS, DECLARATIONS, AND PLATFORMS OF THE SOCIALIST PARTY OF AMERICA,* as

* Italics mine.

declared in the official statements of that party and for their undoubted participation in the disloyal and treasonable conduct of the party. . . .

"There is, at the present time, in process of organization or has been already organized, what is known as the Third Internationale. It was preceded by two others, known respectively as the First and Second Internationales. Each one of these international understandings between the Socialist groups in various countries had a purpose common with that which will probably characterize the Third Internationale. The phrases of international Socialism have not been changed. The phrases and expressions which have been used here time and again may be read in the literature of Socialism for more than a generation. The phrase that "the only struggle in which the working class is interested is the class struggle" may be found in the record of the trial of the anarchists a generation ago, in Chicago. "International working class solidarity" is no new expression. Unity of the workers of the world dates back to the manifesto of Marx and Engels. There is nothing new in any of these terms and expressions, and we must look deeper to see what it is that has caused the institution of this inquiry and what lies at the bottom and constitutes the foundation of this investigation. . . ."

After stating the history and purpose of the first and second Internationale, as he knew it, Mr. Conboy continued:

"But the Socialist Party of America put its allegiance to the principles of internationalism above its allegiance to the United States of America. Its members were true to their faith, and were not led away by the false doctrine of national patriotism, but steadfastly maintained and upheld the ideal of international working class solidarity, and called upon the workers

of the United States to refuse support to this government in the war.

"Two thousand members of the party were arrested for their activities, and the principal executive officers and members of the executive committee were indicted, convicted and sentenced to terms of imprisonment."

The orator then discussed the formation of the third Internationale at Moscow. Resuming, he said:

"We are, therefore, confronted at this day and by virtue of these recent events and facts with the necessity for determining how we shall treat this group of persons who are in the United States but not of it, who, while accepting the benefit of our laws and institutions and sacrifices of blood and treasure, given to support them, refuse their support to them, who take all they can get but will not give a life or a dollar to preserve, defend and perpetuate the government that is their sole and only guaranty of life, liberty, property, and the pursuit of happiness.

"It is the first time since the rebellion of 1861 that notice has been plainly and explicitly served upon the government of the United States by a group of men residing within its borders that they will not support or defend it, but that on the contrary, they will by all means in their power obstruct and resist it in its effort to maintain in time of stress its national honor and existence. The present issues, therefore, transcend in importance even the war program of the Socialist Party of America adopted in April, 1917; for disloyal and traitorous as that program was, the present international affiliations and the purposes of the same are the evidence sufficient and satisfactory to the point of demonstration that what transpired at that time was not an isolated act of disloyalty, but only the initial step in a continuing program of treason. The Social-

ist Party of America is not a loyal organization, disgraced occasionally by the traitorous act of a member, BUT A DISLOYAL PARTY OF PERPETUAL TRAITORS. . . .”

Mr. Conboy contended that the Socialists were no longer satisfied with using “force and violence,” but decided upon a “means of a more insidious character,” the use of “the institutions of the government to destroy it.” Referring to the oath, he said:

“The taking of this oath is not a mere formality. The pronouncement of its terms is not exacted as a mere lip service. It has a definite purpose and object. It is intended to secure an official statement from and pledge by those who have been elected to office under this State that they will support the constitutions of the United States and of the State. If a member of this Assembly, duly elected by the votes of his constituents, were to present himself at the bar of this House and declare that he would refuse to take the oath to support the Constitution of the State of New York, he would be refused admission as a member of this body. It would not make any difference whether he refused to take that oath because of an expressed determination to refuse support to this government or because of failure upon his part to give any explanation for his conduct. The situation is no different if a man elected by the vote of a constituency to take a seat in this body subscribes to and accomplishes the formality of the constitutional oath of office, but is a member of an organization whose principles and tenets he has accepted in their fullness which require him and all the members of the same organizations to refuse support to this government in time of stress and national crisis when the very existence of the government is threatened, when powers domestic or foreign are endeavoring to pull down the structure; and the

man who at that time is pledged to obstruct and resist the effort of the government to sustain itself cannot without a lie upon his lips and within his heart take an oath to support the Constitution of the State of New York and the Constitution of the United States, and his attempt to qualify by taking an oath which he does not mean to keep should be utterly disregarded as patently sham and a mere cloak for treachery."

At this point, Mr. Conboy turned aside from his theme to discuss "Bolshevism" and the workings of the Soviet system in Russia. Having polished off these subjects to his satisfaction, Mr. Conboy then resumed:

"And now I come to apply, with the aid of the evidence, these fundamental principles to which I have been directing your attention, to the charges that have been made against these five Socialist Assemblymen and the party of which they are members; and I shall very largely follow, in this connection, the lines of the argument made by the representative of these five men in his remarks delivered in this Chamber yesterday.

"The Socialist Party of America is neither a party nor American. It is an organization created for the purpose of accomplishing in the United States by any available means, determined only by national conditions and exigencies, the social revolution and the establishment of a Socialist commonwealth as part of the international revolution of which the present Soviet government of Russia is a part. . . ."

Referring to the St. Louis platform adopted at the National Convention of the Socialist Party in April, 1917, Mr. Conboy continued:

"The explanation of the anti-American attitude of the Socialist Party of America during the war lies in

the anti-national and pro-international character of its program. Its members are not occasional but perpetual traitors, in constant conflict not merely with the purposes of any temporary administration of the affairs of this government, but with its very institutions and fundamental laws. They are citizens not of the United States, but subjects of the Internationale whose pronouncements are to be given their moral support, a support which they not only withhold from, but deny to the government of the United States. Their submission to the laws of this country is a matter of expediency or the result of the coercion of the Penal Law. Resistance to the raising of national armies or repudiation of the solemn obligations of the nation were advocated, approved and adopted by the deliberate and overwhelming support of the membership of the party and only deleted or exorcised from its platform by an utter usurpation of power on the part of the National Executive Committee of the Socialist Party, to hide from the public authorities the illegal purposes of the party and to suppress and conceal the evidences of its unquestioned guilt. To-day these illegal provisions stand unrepealed and no attempt has been made to secure their elimination from the platform of the party or by any means known to or accepted by its organic form."

Mr. Conboy then launched into a long and intricate discussion of the various "Internationales" and what he called the dictatorship of Moscow, which he declared was trying to extend itself to the United States. He then resumed his argument as follows:

"Now, we come to a consideration of the methods or tactics by which the Socialist Party of America hopes to accomplish these things. The Socialist Party of America is preparing for and attempting to bring about a revolution in this country as a part of the in-

ternational social revolution for the foregoing purpose and to accomplish the foregoing program by the following unlawful methods:

"First: It has opposed and obstructed and continues to oppose and obstruct the government of the United States and of this State in all measures relating to the national and state defense. Its purpose in so doing is a manifest one: to weaken and leave defenseless the government of State and Nation against the attacks of foreign and domestic enemies, and thus deprive it of that right of self-preservation which is admittedly the first law of governments as it is of individuals.

"Second: It has advocated and incited the destruction of the existing government of the United States by illegal mass action.

"Third: While professing to utilize political action, it constantly denies that existing evils or defects may be remedied by such action, and insists that such political action must be supplemented by violence and mass action, which it advocates, both directly and by insinuation and suggestion.

"Fourth: The political action of the party is responsive only to the dues-paying membership. Those who are elected to office are bound to follow the dictates of such membership and their compliance is compelled by drastic and comprehensive provisions in the constitutions of the party.

"Fifth: These methods and tactics are prescribed for the members of the party as an integral part of the party's principles and program by a great international body. In the employment of each and all of these methods, the Socialist Party of America is in harmony and accord with the radical revolutionary Socialists in all the countries of the world. . . ."

The speaker then quoted extensively from alleged utterances by Eugene V. Debs and Kate Richards

O'Hare, imprisoned Socialists, in regard to war, saying:

"The position taken by Debs is the position of the party. The acceptance of the program promulgated by Lenine and Trotsky through the instrumentality of the Third Internationale at Moscow is a program of force and violence. It is this program that the Assemblyman-elect, Louis Waldman, in his speech of November 7, 1919, unqualifiedly supports and approves. I have also emphasized that the document known as the Manifesto of the Moscow Internationale exhorts the proletariat of all lands, including the United States of America, to disarm the bourgeoisie at the proper time and arm the laborer. This is no peaceful revolution, but means force and violence."

At last Mr. Conboy came to the point where he said he was ready to "deal with certain acts, conduct, and declarations of these individual members of the Socialist Party who are the subjects of this investigation." All these acts and declarations, however, proved to be nothing more than what had already been previously emphasized—that all the accused Assemblymen were, in truth, active, dues-paying members of the Socialist Party.

Said Mr. Conboy: "Mr. Hillquit well said that the Socialist Party was not a pacifist party. It will not be necessary to review in detail the evasive responses made by Waldman to questions respecting the various provisions of the war proclamation of the Socialist Party, its various platforms and pronouncements; that evidence is before you; you have had the opportunity to observe him on the witness stand; it is for you to judge whether his answers were frank, clear-cut and responsive. It is for you to determine whether the witness before other audiences has shown the same care, caution and solicitude to impress upon his audi-

tors the innocuous, vacuous and wholly innocent meaning of words and declarations which to ordinary minds carry an unmistakable message of disloyalty, contempt for American institutions, and treasonable purposes. It is this witness, who, having just been chosen to represent a district in an American legislature, eagerly participated in a meeting called for the purpose of celebrating the second anniversary of the Russian Revolution. It is this witness who urged his hearers to join the Socialist movement in America if they revered their Russian comrades, if they applauded Lenine and Trotsky, if they believed in the worthiness of their cause, in the accomplishment of their work, in order to make America more like Russia to-day.

"Bearing in mind that at the time of uttering his speech, the Socialist Party had already committed itself to an alliance with the Third Internationale under the leadership of Lenine and Trotsky at its National Emergency Convention held at Chicago in September, 1919, the real meaning of this plea cannot be clouded by the statement of this witness to this Committee. He was not satisfied to express his admiration for the Russian regime, but must needs convince his hearers that there were but two courses of action open to them. He presented but two alternatives, either Russia lives and conquers the world (at this point he remembered that there was some government representative sitting in his audience recording his utterances, so he hesitated a moment, and said: 'Not Russia conquers the world, but its ideas and philosophy, worthy of the Russian government to-day, should conquer the world—either that, or the ideas and the philosophy of Gary and Wilson and Palmer, Lloyd George and Clemenceau is to conquer the world. Between the two, for my part and for the part of thousands of Socialists now battling in America to-day, we choose to

stand by the ideas and philosophy and program and principles of Lenine and Trotsky as those we approve.' Before an audience of his own kind, Waldman has given expression to his real meaning and real purpose. It is to the program of Lenine and Trotsky that this Assemblyman-elect has committed himself. You have before you in detail that program. It is set out in clear and unmistakable terms in the Manifesto of the Moscow Internationale, which has been offered in evidence bearing the signature of Lenine and Trotsky."

Mr. Conboy concluded by saying:

"It is of the utmost importance that these matters shall be given the most careful attention and scrutiny, for upon the one hand the determination is involved whether we are to harbor within the United States, and sanction, by permitting the use of our legislative halls to them, a group of men pledged to destroy our institutions; or whether, upon the other hand, we are to maintain against such attacks the integrity of our institutions."

The last speech for the prosecution was delivered by former State Senator Elon R. Brown. Mr. Brown has always been known as reactionary, even among the members of his own party. He is a large, fleshy, heavy-set man, advanced in years, and suffers from a defect in his hearing, which perhaps partly explains why new ideas are so long in reaching the ex-Senator's mind. In his capacity as leader of the Republican Party during his term in the legislature, ex-Senator Brown was responsible for measures which well-nigh nullified all the existing laws against the employment of child labor in the State, and he was always a champion of the manufacturing interests in their opposition to labor welfare bills.

In opening his speech, he declared it to be "impor-

tant that a rule should be laid down now, and that a party has arisen, or what claims to be a party and organized for the purpose for which the Socialist Party is organized, to say whether or not now and hereafter, the members of that party are competent under the Constitution, to sit here and perform the high duties which are devolved upon the sovereign body of the State."

Continuing, he said: "I DREAD TO TAKE UP WITH YOU AND FOLLOW THE PRECEDENTS UPON THIS SUBJECT. IT WOULD BE MORE INTERESTING FOR ME TO SPEAK TO YOU GENERALLY ABOUT IT, BUT IT IS A MATTER OF SUCH VITAL IMPORTANCE, IT IS SO ESSENTIAL THAT YOU SHOULD FORM A JUST JUDGMENT UPON IT; IT WILL CARRY WEIGHT NOT ONLY IN THE JUDGMENT OF THIS CASE, BUT IT WILL CARRY WEIGHT IN THIS HISTORY OF THE STATE; IT WILL CARRY WEIGHT IN OTHER STATES; IT WILL BE THE BASIS OF ACTION NOT ONLY IN THIS JUDGMENT, BUT IN OTHER JUDGMENTS, AND IT IS OF THE FIRST IMPORTANCE THAT YOUR ACTIONS SHOULD BE ALONG RIGHT LINES." *

Mr. Brown went on to contend that while it might not be all right for the Assembly to expel certain men at one time, it was perfectly all right for it to do so at another time. This novel viewpoint he elaborated upon in the following words:

"Of course the necessity of self-defense is greater at some times than it is at others. The necessity of the exercising of the right of self-defense by a legislative body in the trying times of the great rebellion, was greater than in piping times of peace, and it is because

* Capitals mine.

the necessity of considering the question which you are now considering is greater now than it has ever been before that this case has arisen. If it had not been for the war and the development and the consequences of the war, this case would never have arisen. The counsel for the defense are right in that respect. But because the occasion is different and the necessity is greater, doesn't result in the conclusion that the right could not or ought not to be exercised at other times. It is because the duty then becomes plain in the light of conditions which is only seen dimly when everything is moving along slowly, easily and peacefully."

Early in Mr. Brown's speech, Assemblyman Evans interrupted him to ask his definition of the word "test," as used in Article 3, of the State Constitution, to the effect that "no other oath, declaration, or test shall be required." The speaker replied:

"Well, the word 'test' has a very definite meaning in the development of constitutional history. They formerly had a Test Act and Test Acts in England and other parts of the English Empire, by which a man, for instance, who was a Catholic could not be admitted to a legislative body. The Test Act—I have not briefed up the subject, but I am familiar with it in a general way, as I have read of them in history—the test referred to is that a man shall not be required to say that he does or does not believe in this or that or any other thing which, under our Constitution, is deemed to be a matter of free exercise of his thought, judgment, and conscience. It had principal relation to religious tests. I can see that it may have application to other tests, but it certainly does not apply to a case like this, of alleged disloyalty to the country, for the reason that the test of disloyalty to the country is embraced in the constitutional oath which every one of you is required

to take; and the only test which is to be applied in this case is the test which is expressly applied by the Constitution, namely, ability to take the oath and compliance with it."

In giving his understanding of the meaning of Socialism, ex-Senator Brown was at his best. He took particular alarm at the statement that under a proletarian regime those people who will not work must starve. Said he:

"Hitherto a man's desire for an opportunity to employ his energy, his talents for individual advancement to acquire means for the establishment of a home and the care of his loved ones, has furnished the chief impelling motive for the establishment of a free and democratic government.

"Opportunity; opportunity—the basis of the heart's desire and of every human institution, since the creation during the entire history of man, that has been the struggle of humanity for individual opportunity and that age-long quest at last found its great triumph and success in the American Republic. The opportunity to develop your talents, to get an education, to find employment and occupation for the purpose of saving and accumulating so that you and yours might be in comfort; the opportunity to gratify the proper ambition, the reasonable ambition, of the human heart for position in life, in business, in society, in government; the opportunity to be free and to have secured the earnings which your talents and your industry have brought you—this has been the picture which has been held before the human mind and which has demanded gratification of the human heart through all the history of the development of civilization, and nowhere was it ever realized before in the degree that it has been realized in this Republic.

"Now, Socialism, as summed up by Morris Hillquit

may be summed up in an even briefer form. Heretofore, thrift and the CAREER OF THE INDIVIDUAL WHO DESIRED TO SUCCEED IN THE WORLD FINANCIALLY HAS BEEN CONTROLLED BY SUBTRACTION AND ADDITION. HE SUBTRACTED FROM HIS EXPENSES AND THE GRATIFICATION OF HIS WISHES AND HE ADDED TO HIS INDUSTRY AND HIS SAVINGS SO THAT HE MIGHT ACCUMULATE, AND THE RESULT HAS BEEN THE GREATEST AVERAGE FINANCIAL WELFARE IN THIS COUNTRY THAT THE WORLD HAS EVER KNOWN, NOT AT ANY ONE PARTICULAR PERIOD, BUT AT ALL PERIODS. NOW, MR. HILLQUIT WOULD SUBSTITUTE FOR ADDITION AND SUBTRACTION, DIVISION. That is, instead of working harder and saving more and denying oneself, WE WILL SIMPLY DIVIDE UP WHAT OTHER PEOPLE HAVE SAVED? ISN'T THAT A FAIR STATEMENT OF IT? *

"If this were a dream of Utopia or of a millennium or even a Seventh Day Adventist plan of translation to a better world, it would not require your attention. It would only arouse your amusement and furnish to you what Mr. Hillquit claims we are bound to furnish at the expense of those who have saved, to all the people he represents; that is, amusement and the blessings of civilization. It is not the suggestion that demands our notice, but the proposed means as they affect US, the state and the nation. If the program succeeds, we shall no longer have a government of the people, by the people and for the people, because it clearly appears in their program that it is not the people, but a class; and we will have a government of the prole-

* Capitals mine.

tariat, for the proletariat and by the proletariat; that is, government by a class and all who are not of the class must surrender all their worldly possessions for the enjoyment of that class, and, as Waldman says, if they don't go to work,—that is, work as approved by the proletariat—they must starve.

“THIS PROGRAM WOULD BE SUFFICIENTLY STARTLING AS A PEACE PROGRAM, BUT AS A REVOLUTIONARY PROGRAM, ACCOMPANIED BY REVOLUTION, IT IS TERRIFYING, AND AS FAR AS IT HAS PROGRESSED, MENACING TO THE GOVERNMENT AND THE INSTITUTIONS OF OUR COUNTRY.” *

Mr. Brown compared the modern Socialist program to the “eruptions of Alaric and his barbaric hordes” of ancient times. He said:

“A somewhat cursory examination of the present Socialistic program shows that it differs from Alaric's adventure chiefly in the expectation that the Huns are already securely quartered upon us, and can, if foreigners take advantage of the nations' hospitality, and if citizens employ their privileges to conquer the land and divide the booty; and all that intervenes between their carrying out of this program is awakening them to a sense of their power.”

Ex-Senator Brown gave his own private definition of what he conceived the Socialist philosophy to be in the following words: “Stripped of its rhetorical ornaments, it is that a certain class, including the foreign-born and foreigners, who number millions, should take the accumulated wealth of all the generations that have toiled and saved on this continent, and to divide among those who arrived yesterday and the day before, as well as twenty years ago.”

Mr. Brown then pointed with alarm to a certain

* Capitals mine.

speech once delivered by Eugene V. Debs, in which a reference to "crimson flowers" was interpreted by the horrified ex-Senator to mean "blood." He quoted Mr. Debs as saying in a speech delivered in Cleveland March 12, 1919:

"These crimson flowers that have just been presented to me, represent the springtime, the springtime of revolution."

"WHAT DID HE MEAN BY THAT?" shouted Mr. Brown. "HE MEANT BLOOD. IT ISN'T SUSCEPTIBLE OF ANY OTHER INTERPRETATION! HE ADVOCATED AND INCITED HIS HEARERS TO TREAT THE CRIMSON FLOWERS AS REPRESENTING THE SPRINGTIME OF REVOLUTION! IT WAS NO ACCIDENT THAT THEY WERE CRIMSON." *

The Socialist recognition of the class struggle the ex-Senator described as "a return to barbarism" in the following language:

"Mr. Hillquit's proposal to do away with all conflict between classes is to destroy all classes except his own. That is the reason and meaning, that is the means that he proposes to employ to do away with class rule. He proposes so far as all classes are concerned to make a wilderness and call it peace. It is the suppression of right by might. It is, so far as its very innermost principle is concerned, a return to barbarism."

That there were no charges against the Socialist Assemblymen as individuals was the admission of Mr. Brown at one place in his speech. He admitted that if the five Socialists had been guilty of specific offenses, the law would be able to take care of them. On this point he explained his sentiments as follows:

"I wish to say now that for my part, and I say it

* Capitals mine.

with the entire concurrence of all of the counsel upon this side, that if it were mere aggressions, the law would be sufficient to treat the individuals who are guilty of them, but such a claim cannot for an instant be maintained. . . .”

The former Senator also took a turn at shaking the bogeyman of Bolshevism at the Judiciary Committee by saying:

“You can judge as well perhaps as anything of whether the utterances of Mr. Hillquit are benign about his explanation of his friend Debs, which I read to you; of Lenine, ‘a sober and moderate man,’ and as he says, whose friendship he enjoys. Lenine, the monster who has brought ruin to the civilization of Russia, to whose charge lie innumerable assassinations and murders, who has overturned the whole system and fabric of society for the purpose of working out his will—the Socialist will—upon the people of Russia.

“No wonder the name of Bolsheviki has come to be a name of horror. We have all seen the pictures of the dead lying in the streets—the starving women with their children. We know what it means in society as well as nationally. We know that Russia to-day is the most disturbed territory in the world; that its horrors exceed all horrors of history since the French revolution. We know them. They have come to us, and the Socialists know them—but there is no horror which will deter them from carrying out the Socialist purposes. They have been forever a revolution in the past, and they are forever a revolution of the future, except the revolution which will overturn the Bolsheviki; and to-day there is no doubt from the evidence which is before you, from the expressions of opinion given by witnesses, and the literature which you have here, that the American Socialist Party would run all the chances that its courage permitted it to, for the

purpose of supporting Lenine and the Bolsheviki of Russia. What for? As they all say, because it is a monument to their belief, and its maintenance will help its extension here and throughout the world; and its destruction means their destruction, or at least the indefinite postponement of their revolutionary and awful program."

Mr. Brown made strenuous objections to Mr. Hillquit's citation of the Declaration of Independence. He declared that the Declaration of Independence, as "we" understand it, is not the Socialists' understanding of the Declaration of Independence. Said he:

"The Declaration of Independence was a Declaration of Independence from a foreign domination and for the purpose of establishing a free representative government on this continent, and what was said then we adhere to fully, but it furnishes no justification whatever for the Socialist contention. The declaration I will read to you: 'WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED EQUAL, THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN INALIENABLE RIGHTS, THAT AMONG THESE ARE LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS. THAT TO SECURE THESE RIGHTS, GOVERNMENTS ARE INSTITUTED AMONG MEN, DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED, THAT WHENEVER ANY FORM OF GOVERNMENT BECOMES DESTRUCTIVE OF THESE ENDS, IT IS THE RIGHT OF THE PEOPLE TO ALTER OR ABOLISH IT, AND INSTITUTE NEW GOVERNMENT, LAYING ITS FOUNDATION ON SUCH PRINCIPLES, AND ORGANIZING ITS POWERS IN SUCH FORM

AS TO THEM SHALL SEEM MOST LIKELY TO EFFECT THEIR SAFETY AND HAPPINESS.'

"Now, Mr. Chairman, in relation to that passage, I desire to call your attention to this. Mr. Hillquit read the words that were not read by Mr. Littleton for the purpose of justifying a revolution against this Government. Words that were uttered in justification of the revolution, the American revolution, he has twisted into a justification for the action of the Socialist Party in seeking to overthrow this government. Otherwise his language cannot be significant. The Declaration recognized no class, and had for its leaders Washington and Hancock, wealthy men of their day. To invoke the Declaration of Independence to justify the Socialist Party's revolutionary purposes is a gratuitous insult to its framers and the nation. That declaration has carried the torch of liberty to the darkest corners of the earth and lighted the footsteps of millions of the oppressed to our shores, among them Morris Hillquit, August Claessens, and Louis Waldman. But Hillquit represents the Declaration as justifying the dedication of his life to employing every opportunity to benefit himself personally and to destroy our government and institutions.

"You know Patriotism, as the Socialists understand it, is not our patriotism, and so you know the Declaration of Independence, as we understand it, is not the Socialist understanding of the Declaration of Independence. They believe or profess to believe in this statement, that when our fathers planted, they sowed the seed of tares and thistles that will grow up and choke and destroy the crop of American freedom, liberty and pursuit of happiness. The simile is not a sound one. It has no application. It is not true in fact. The truth about it is that another simile is much

more applicable, namely, that a serpent has crawled into the bosom of the Republic for the purpose of stinging it, if possible, to death. The seed was not sown with the original crop. It is not a matter of vegetable growth. It is a matter of animal venom, and that venom is directed to destroying the institutions based upon the Declaration of Independence."

The ex-Senator then read from the opinion of the court in the case of the People vs. Most, comparing it with that of the Assemblymen's case. He referred to it in the hope of prejudicing the cause of the accused Assemblymen. The court's decision in the case of Most was thus apparently intended to be charged to the account of the five unseated Assemblymen.

Suggesting that if there were constituencies possessing sufficient effrontery to vote the unseated Assemblymen back into their chairs, it was the duty of the country to "suppress" them, Mr. Brown said:

"It is suggested that if these men are expelled they will be reëlected and an increased Socialist vote will be given. That is, you are warned that if you throw traitors out of this House, it will be discovered that they have traitorous constituencies, and that more traitors will be added to them because you have performed your solemn duty. Well, gentlemen, Berger was reëlected, but he was peremptorily thrown out, and he will be peremptorily thrown into prison. If he had a disloyal constituency, **IT WAS THE DUTY OF THE COUNTRY TO SUPPRESS IT.**" *

Mr. Brown rose to the climax of his oration in the following words:

"I have been brought up on a literature to which all this cattle is a stranger. I remember that there is a poem reading:

* Capitals mine.

“Lives there a man with soul so dead,
Who never to himself hath said,
‘This is my own, my native land?’

“It does not read very well when placed beside the literature of the Socialist Party, that cares nothing about the boundaries of a country; that cares nothing about any of the people of the country, except the proletariat; that does not believe in our government and wants to overthrow it; that continues an allegiance to a foreign entity which seeks the destruction of our government and the destruction of all classes except itself.

“The test for office, gentlemen, in this State and Nation is a simple one, that no loyal man should have the slightest difficulty in complying with. The State requires very little in the way of qualifications of those elected to office. It is with only one of these that we are concerned in this proceeding. The Constitution only requires that an oath be taken to support the Constitution. The Legislature did not prescribe the oath. It is the fundamental law stated by the people themselves and initiated by them for their protection to secure the support of their organic law. If a man cannot comply with its requirements, he cannot be permitted to sit in this body. The people of this State have declared that if he cannot comply with it—and from time to time it has been declared—the Legislature may not permit him to sit in the law-making body, because he cannot sit here until he has taken his oath, and the oath is the most sacred of the pledges among men. He should not be permitted to take it when it is known **THAT HE DOES NOT INTEND** to carry it out. It is the duty of this Assembly to protect their membership in order to deserve the confidence of the people of the State. This is not merely a

trifling matter. IF YOUR JUDGMENT SHALL BE THAT THESE MEN ARE ENTITLED TO SIT IN THIS ASSEMBLY, WHAT LESSON ARE YOU TRYING TO INSTIL UPON THE LOYAL PEOPLE OF THE STATE OF NEW YORK? If these men may sit in this Assembly, with their disloyal purposes established beyond controversy, what must a man do which will cause you to prevent him from sitting here, which will lead you to exclude him? Is it of no importance that your judgment be right? What think you of its effect upon the free institutions of this State and of the country, that you PERMIT DISLOYAL MEN TO SIT HERE AND BE ADVERTISED TO THE PEOPLE OF THE STATE AS MAKING LAWS FOR THE PEOPLE OF THE STATE?

"No more disorganizing a force could be conceived. IT MEANS WEAKENING THE PATRIOTIC FIBER OF EVERY PATRIOTIC MAN. . . .

"It is admitted that these men subscribed to the tenets of the Socialist Party. That is in the record. What the Socialist Party did, furnishes gravamen of the charge against all of them. What was done by individuals only goes to support that charge, and if what they did had not been done in the presence of the disloyal purposes of the party, they would be comparatively harmless, and it would be of no importance, no matter what your judgment may be.

"The question is, which flag do you follow? Do you follow the red flag of anarchy now suppressed by law which these men would, if they could, parade in every street, in every city, of the land, or do you follow the Stars and Stripes?"

The conclusion of Mr. Brown's speech was greeted with applause.

CHAPTER XIII

MR. STEDMAN CONCLUDES THE SUMMING UP FOR THE DEFENSE

The second and concluding speech of summary for the defense was made by Mr. Seymour Stedman of Chicago. He spoke with grace and dignity, and made a visible impression on his audience. Loud and lasting applause greeted his peroration. One Assemblyman came up to him to say that he had heard enough to cause him to change his mind, and that when the Judiciary Committee's report came in, he would vote for reseating the Socialist Assemblymen.

In beginning his speech, Mr. Stedman referred to the fact that since the hearing had started it had become known that the Socialist Party by referendum had voted to affiliate with the Third Socialist Internationale, with certain reservations to the effect that this affiliation did not carry with it an endorsement of the Moscow Internationale program or tactics; that this was not known at the time of the suspension, and could not therefore constitute a basis for investigation. He declared that the hearing had gone far afield from the charge made in the original resolutions of suspension. Said he:

"In the opening of this trial it appeared that there was no precedent to guide your actions, and it is true that on all fours none exists. In no European body, no parliamentary government, Anglo-Saxon, Oriental or Slavic, have we any record like that presented here and upon which it is claimed there is a right to ex-

clude men from participating in a legislative assembly.

"I might say that the nearest to it is an incident growing out of the Duma, when there was a general strike in Russia, so much deprecated by the gentlemen who have preceded me, in which the lawyers and the laborers participated, demanding the right to meet and assemble in a National Council; the Czar yielded and threw what Mr. Conboy referred to as a sop to the people, by permitting the organization of the Duma. During its existence there were some four or five men who were members of that body, charged with a conspiracy, as we would understand the term. It was shown that they had come together; that they had agreed; that they had purchased explosives; that it was their object and purpose to destroy the lives of some of the royal family or those affiliated with them. As a result, they were prosecuted, convicted and expelled from the Duma. So at last we have reached the point where an American Assembly can borrow from the greatest tyrant of modern times a half-baked precedent for the course it is attempting to pursue.

"Early in this proceeding it was obvious that there was no law for the proceedings which had been taken. Mr. Stanchfield commenced to establish a law, and he established it, under a very wide basis. He is a lawyer of distinction. But before I refer to his statement as to the power and authority of this Assembly and what justifies it to proceed, I should first use, or define, a few of the terms which will be used in the course of my remarks. Words constitute simply the vehicle with which we carry thought from one to another, and it is important that we should understand precisely what is meant by words so frequently used in this proceeding.

"Opposition has been used constantly as synonymous with disapproval. A person may disapprove an

act, and yet his conduct may not be such as to obstruct it or destroy its efficiency. Neither is opposition in opinion against a law necessarily a violation of it. In fact, in no instance is it a violation. A person may be opposed to the Prohibition Act. The fact that he is opposed to it and never speaks a word in its favor does not constitute him a criminal. The fact that he may oppose it and never say anything in its favor does not constitute him an accessory to a boot-legger's operations. A man may oppose a federal revenue law. That does not constitute him a violator of it; because, forsooth, at no time has he expressed anything in approval of it. And the fact that a man becomes a violator of that law, a smuggler, is not the responsibility of the man who has opposed the law."

Discussing the question of the constitutional oath which had been raised during the trial, Mr. Stedman proceeded to cite some American history in the following language:

"I want to read now an authority—that is, he would have been an authority one time in American history—and he is to some people now. The man's name is Andrew Jackson, at one time President of the United States. The question came up who should construe a constitutional oath and a provision of the Constitution. Of course, it seems to me that it ought to be perfectly apparent that there would be a difference as to the meaning of the Constitution. You know now I am referring to military appropriations, and whether members must vote on it.

"You pass laws. The Supreme Court says you are wrong, the laws are unconstitutional. Does that mean that you have violated your oath of office? Maybe it happens a dozen times. Does that mean it? Not at all. But more fundamental than that, every single one of the great departments, the Executive, Judicial,

and the Legislative department of this government, are each sovereign in determining what is constitutional. Otherwise you would have no method of checking one department against another.

"So I want to read from the messages and papers of the President. This is stated on July 10, 1832. It is stated so long ago that we have forgotten. It has been smothered by more recent utterances of men prominent in life and newspapers with large headlines. 'If the opinion of the Supreme Court covered the whole ground of this act,' said President Jackson, 'it ought not to control the coördinate authorities of this government. The Congress, the executive and the courts must each for itself be guided by its own opinion of the Constitution. EACH PUBLIC OFFICER WHO TAKES AN OATH TO SUPPORT THE CONSTITUTION SWEARS THAT HE WILL SUPPORT IT AS HE UNDERSTOOD IT, AND NOT AS IT IS UNDERSTOOD BY OTHERS;' not as it is understood by Mr. Sweet; not as it is understood by this Assembly; but as each Assemblyman understands it for himself. Because, after all, if a constitutional question comes up for disposition in this House, the majority decides it. The Committee reports, your Code Committee here, or the Judiciary Committee in other assemblies. They report the bill, and a member raises the question: is it or is it not constitutional? You divide on the question.

"'It is as much the duty of the House of Representatives, of the Senate and President, to decide the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges, when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the

President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the executive when acting in their legislative capacity; but to have only such influence as the force of their reasoning may deserve.'

During the summing up, counsel for the prosecution had made so much of the "criminal attitude" of Eugene V. Debs in regard to the war, that Mr. Stedman introduced into his speech the reply of Debs to the court as to why sentence should not be pronounced upon him for alleged violation of the Espionage Act.

This speech by the best beloved Socialist in the United States, as read by Mr. Stedman was so eloquent that many persons in the Assembly chamber were moved to tears by its telling passages.

Mr. Stedman then commented upon the attitude and personality of Debs as follows:

"The witnesses who have been examined in this case—Assemblymen and others—have, in response to questions asked of them whether they favored Mr. Debs as the candidate for President at the coming presidential election, without exception, those who have been so interrogated, have responded in the affirmative. It was stated that the beliefs of Mr. Debs personified and represented the spirit, the purpose and the object of the Socialist movement. As nearly as it can be portrayed, from what he has said and the charge against him we gather his intent, his motive and his ideal. It is not anti-national; it is not destructive in the sense of ruthless, barbarous upheaval. It is not a mode of warfare of the sword. He has no conception of Jesus with a dagger in his teeth. He believes in the power of moral suasion, and in this declaration he makes the statement most emphatically, as he

* For the full text of this speech see "Debs: His Authorized Life and Letters" by David Karsner (Boni & Liveright).

has throughout his entire life, that in a government where the voice of the people is the voice of God, some time the truth would prevail for all time, until it served the great majority of the people.

"He has faith in the people of his country, faith in their intelligence. He represents in a sense the movement. Perhaps he represents it more completely than any other man in this country. The fact that he is convicted does not change the fundamental purposes and objects for which he stood."

In concluding, Mr. Stedman referred to the Socialist recognition of the present struggle between classes, which is to be succeeded by an era of fraternity and world-wide brotherhood. He ended his address as follows:

"What is the difference between you and me? In your hearts you do not believe that Morris Hillquit or any of these men think less of the people of this country than you or I do. You simply think we are wrong, that our judgment is bad, that our heads are not built right on the inside—that's all. No one but some omniscient power knows who is right. You take your chance in presenting your views to the people. We take ours, feeling that the mass intellect of this country, with all the facts before it, will ultimately arrive at the correct solution. That is the faith of the Socialist—faith in the ideals of Americanism—deep, solid and heartfelt. That is what we believe in. And, gentlemen, basically that is what you believe in, and it is in that belief that we have our hopes and our just expectancy for the seating of these Assemblymen."

CHAPTER XIV

THE EXPULSION

Expulsion was the verdict.

The Judiciary Committee, acting with the "reasonable speed" promised by Chairman Martin in his opening statement, took three weeks to frame its report. It was handed in on March 30, a little less than three months after the act of suspension.

The report was by no means unanimous. With all the pressure that the Speaker brought to bear, the prosecution was able to muster a majority of only one, the vote of the Committee being seven to six. The seven members who signed the majority report recommending outright expulsion were Chairman Martin, Everett, Jenks, Rowe, Wilson, Cuvillier and Harrington.

Five other members—Evans, Bloch, Stitt, Blodgett and Pellet—insisted upon reseating all the five accused men. Mr. Lawn reported in favor of reseating only DeWitt and Orr.

Upon motion it was decided that action upon these reports be taken March 31. An unusually large crowd gathered and packed the Assembly chamber on this day as early as 11 o'clock in the morning. The galleries were ordered closed by Speaker Sweet, from apparent fear that they might be filled by the common people. The limited area on the floor, however, was crowded by the wives and friends of the prosecuting legislators. At 11 A. M. the Assembly chamber

was locked, so that no member could leave without the Speaker's permission.

At the very beginning a struggle opened between the Republicans and Democrats, the latter trying to have consideration of the reports postponed for 24 hours. The purpose of this was to relieve Governor Smith, who is a Democrat, of the duty of calling special elections, inasmuch as under the Constitution, a vacancy occurring after March 31, cannot be filled for the regular legislative term.

A compromise was arrived at under which "unlimited debate" was agreed upon, so that the proceedings might be dragged out until the day following. This would prevent the five Assemblymen from being immediately reelected in case their constituencies so voted.

The majority report consisted of distortions of the testimony and misstatements of the law. Through its 81 typewritten pages ran ignorance of the Socialist movement that was startling. Its dominant note was that the Socialist Party was not a "loyal" party and that it was the duty of the Assembly to rid itself of "disloyal" members. It made no attempt to define loyalty. It was sure, however, that the five Socialists were disloyal. It characterized the entire membership of the Socialist Party as being composed of "perpetual traitors" and let it go at that. Not content with declaring the seats of the five Socialists vacant, it urged legislation that would outlaw the party to which they belonged. It declared that "each and every charge" made against the accused Assemblymen "had been established," that each one was therefore disqualified to occupy seats, and that "because of such disqualification they were and each of them was incapable of taking the oath of office prescribed by the Constitution of the State according to the real intent and purpose

of the constitutional provisions requiring the taking of such oath."

One of the minority reports, signed by Stitt and Pellet, strongly dissented in the following words:

"If the Legislature cannot by statute prescribe membership in a political party as a condition for holding office nor the taking of an oath of loyalty as a condition for holding office, nor the taking of an oath of loyalty as a condition for exercising the right to suffrage, it necessarily follows that the Legislature should not by resolution exclude from membership a duly elected member by reason of his membership in a particular party or group. . . . To exclude a duly elected member because of membership in a particular political party or because of his political or economic views not only would be contrary to the spirit of the Constitution but would be a most dangerous attack upon the right of representative government and free political action, the fundamental principles upon which our Republic was founded. . . . In view of the long established recognition of the Socialist Party as a political party, we cannot now say that it is not a political party and, by excluding its representatives, disfranchise the people of five Assembly districts."

Another report submitted by Mr. Blodgett, the youngest member, and not yet hardened to the "traditions" of the Assembly, denounced disqualification because of party membership as "too dangerous."

"It is not American in method," said Mr. Blodgett. "It is not sound. We have passed through many periods of history, which have taught us the priceless-ness of freedom and the value of institutions that stand firm through all periods and with reference to all men. . . . These men as Socialists have very different viewpoints from those of us who are non-Socialists. Their party is more than a political party—it is an



Courtesy of New York Call

"It seemed at times as if every man one met had a bottle of old-time whiskey on his hip, and was ready to share it. The cloakroom of the Assembly reeked of alcohol, and most of the breaths one encountered in the lobby were redolent of the still."

New York Globe

economic and social creed, and the faithful thereof hold it in almost religious reverence. The party differs from other political parties because it is and always has been international in its general scope. It is claimed to be national with reference to such problems as are peculiar to individual countries. The party principles with reference to the party here are in decided opposition to our two older parties, and these principles have been published and disseminated to a point of saturation. The party has always consistently been in opposition to war and most of its members hold these views."

Assemblyman Bloch made as the basis of his report the doctrine that "Liberty involves the right to think wrong."

Assemblyman Evans in a lengthy legal document denied the right of the Assembly to ask any test of loyalty of a duly elected public officer.

Debate was opened by Chairman Martin of the Judiciary Committee. He thundered the question: "Are these men loyal according to OUR standard of loyalty?" He admitted that people might differ as to that standard. A little later he answered his own question in the following words:

"We found, according to OUR standard of loyalty, that their conduct was not loyal."

This argument brought from Mr. Evans the charge: "I find you, Brother Martin, and the other six members who signed the majority report, disloyal to the State and to the Constitution."

The debate lasted for 22 hours. More than one-third of all the members participated. During the weary hours of night, many orators spoke to empty chairs. Members could be seen dozing in their seats, lying on benches, taking a nap in committee rooms, and seeking refuge anywhere.

The speeches made against expulsion were met by derision and laughter. Gradually the attacking Assemblymen worked themselves into a frenzy. Those who were reported to have made up their minds not to consent to the wrong done against the Socialist members soon found it to their interest to join with the crowd and gain their share of applause.

As the debate advanced, the Chamber became more and more crowded in the expectation that a vote would be reached at any moment. As the atmosphere warmed up, the time became ripe for a speech by Assemblyman Marty McCue, former prizefighter and saloon-keeper. It was the best "lynch-'em" speech ever delivered before a mob. There was no restraint either in the code of decency or law on McCue's lips. He characterized the Socialist Assemblymen, with whom he had so frequently fraternized during the prohibition fight, as "traitors," "curs," "whipped dogs," and other equally savory names. He marveled at the patience of the Assemblymen who "did not take one or more of them and throw them out of the window." He eloquently declared "these five men ought to be made an example to the other traitors and violators of the law. They ought to be strung up to the nearest lamp post, with their feet dangling in the air."

"I believe the men who stood by the Speaker when he lined the five up in the well of the Chamber and asked them, 'Are you each and every one of you good Americans? If you are not, get out,' were sincere," announced Mr. McCue. He made a savage attack on the Socialist Party and pointed directly at Mr. Waldman, one of the five, who was present on the floor, demanding to know "what he had ever done for the United States."

This open incitement to lynching was greeted by wild cheers in the House, lasting for three minutes.

Hardly had the ovation died away when an assistant to the Sergeant-at-Arms handed Mr. McCue a note saying:

"Marty, be a good sport and move that I be given the floor to answer you. Will you do it?"

"WALDMAN."

The ex-pugilist did not dare. He looked over at the writer and shook his head. But the challenge seemed to unsettle him, even in the midst of his triumph. Later when Mr. Waldman started to leave the Chamber, Mr. McCue arose and came up to him to say: "They would think I am a four-flusher, Louis. I would like to give you the floor."

After McCue's speech all the others came as an anticlimax. None of the following orators could approach his effort in abuse or indecency, and the crowd soon began to dwindle.

The Chamber now looked like a dance hall after the crowd has gone home. The floor was littered with paper. Assemblymen who were not asleep threw things at each other. All the lobbyists who were dependent upon Speaker Sweet's nod and who were constantly hanging upon his skirts, remained wide-awake, however, to cheer on the assailants of the Socialists and to "keep up the spirit" of the proceeding.

While speeches were being made denouncing the Socialist Assemblymen as violators of the law, their accusers were out in the lobby enforcing the Eighteenth Amendment to the Constitution of the United States, which is designed to down the liquor traffic.

"Never was there a better irrigated debate," said the *New York Globe* the next day. The same paper said: "It seemed at times as if every man one met had a bottle of old-time whiskey on his hip and was ready to share it. The cloak room of the Assembly reeked

with alcohol, and most of the breaths one encountered in the lobby were redolent of the still."

The lockers of some Assemblymen seemed to be filled with liquor. One member was so drunk that his friends had to carry him out of the Chamber to be sobered up. While still under the influence of whiskey, he returned to the floor, and getting recognition, balled out:

"Misser Speaker, I-I-I'm 'n favor of"—he paused and waved his head in a search for the right word—"throwin' 'em out!"

About this time Assemblyman Wells got the floor and said:

"We must expel these Socialists. If we do not, our children and our grandchildren will be washing the blood off the doorsteps."

He later explained that he alluded "to the custom prevailing in Egypt when the doors of the Jews were smeared with blood." It must be remembered that the infamous Bailin case in Russia, which called forth protests from the whole civilized world, was conducted by the Czar on precisely this charge. To make his state of mind perfectly clear, he added: "No man can change his name by taking the 'Witz' and 'Sky' off it and try to hide the fact that he is a traitor."

It must have been depressing to the intelligent spectator to listen to man after man arise and repeat ignorantly, sneeringly and incomprehendingly certain phrases taken from written Socialist theory and philosophy which to other men have meant so much that volumes have been composed about them. It would have been more interesting if these speakers had occasionally exhibited even a little originality and spice in their remarks, but most of them were merely insipid and dull.

Early in the debate questions of law, fact and de-

cency were abandoned and the speeches degenerated into wild and purposeless harangues in which the stock phrases beloved of mediocrity and the "whoop-em-up" orator abounded. Such phrases were: "My Fair City"; "This Great State," "Our Country, the Greatest in the World"; "Our Sacred Constitution, The Wisest Document Ever Written"; "Our Holy Flag"; "Our Boys, Oh, Our Boys!"; etc.

These statesmen, now self-converted into judges, relinquished all the parliamentary formalities ordinarily observed and launched into malignant tirades against the "traitors" that they all with one accord had decided the Socialist Assemblymen to be. The only problem, to their minds, was whether these "traitors" should be expelled, imprisoned, shot or hanged, according to the mood of the speaker and the amount of liquor with which he had fortified himself.

Long after midnight Assemblyman Theodore Roosevelt obtained the floor. In his maiden speech he opposed the outlawing of a whole political party. He contended that the evidence adduced was not convincing as to either the necessity or the legality of the proposed action. But little attention was paid to his words, despite the prestige of his name.

All night long the flood of abuse continued. At 10 o'clock the next morning Speaker Sweet left the rostrum and came down upon the floor to assail the Socialists. Referring to the United States flag, he chanted: "That flag is the inspiration for everything that is best and holy within every man and woman in this country, and when it is replaced by the red flag of Socialism, the red flag of Communism or the red flag of any nation that spells injury to our government, that day will see the life-blood of every citizen dyeing the ground sacred to the patriots of our early history who proclaimed it first, last and always the hal-

lowed ground for Americans who in their hearts are Americans alone."

He re-ascended the rostrum amid cheers from the floor. He ordered a vote taken. Each accused Assemblyman was balloted upon separately. The first vote was upon Waldman. The result was 115 to 28, for expulsion.

The Speaker then triumphantly announced: "The resolution having been duly passed, I declare the seat of Louis Waldman vacant."

The same process was repeated at the end of the balloting on each Socialist member. Solomon and Claessens were declared expelled by a vote of 116 to 28. DeWitt and Orr, last to be voted upon, were permanently unseated by a vote of 104 to 40.

Of the Republicans 98—taking the highest vote—voted for expulsion, 18 Democrats joining them, against 11 Republicans and 17 Democrats. A majority in both parties thus voted for expulsion.

The announcement of the result was greeted with loud applause by the judges, who thus bestowed approval upon themselves for their courage and patriotism.

Solomon and Waldman, who had been in the Chamber for 22 hours, remaining throughout the night, withdrew and issued the following statement:

"Treason has been committed in the New York Assembly by Republicans and Democrats, with few honorable exceptions. A bi-partisan combination has overthrown representative government. The representatives of a political party have been driven from the legislative hall solely because their platform was distasteful to their political opponents.

"The Constitution has been lynched, and the perpetrators of this outrage must be brought to justice. The spirit of the mob breathed in the Assembly debate

throughout the weary hours. Under the leadership of Speaker Sweet, man after man openly incited to violence.

"The doctrine of arbitrary power was shamelessly proclaimed again and again.

"The forces of plutocracy and reaction have temporarily triumphed. The common people have been told they have no voice in government, except on the sufferance of the hirelings of vested interests, to whom the powers of state have been surrendered.

"The outrage at Albany is a clarion call to the people of America to rally for the revival of their ancient liberties. The life of democratic institutions is at stake, and the people must get together to right the wrong.

"The workers by whom we were elected must and will be heard. If the people are to be driven from the ballot box where shall they go?

"The right of the ballot is an American right, and those who deny it are traitors.

"The Assembly has consummated the act of lawlessness it began on January 7. Where the verdict was not the product of hysteria and ignorance it was the fruit of contemptible political jobbery. The Albany outrage is the culminating step in a series of assaults on our popular liberties, which will jolt the people into a new political consciousness.

"The Socialist party refuses to regard the act of the Assembly as more than a mad manifestation of fear for the growing political power of labor.

"It will not be swerved from its historic course and mission. With greater faith and vigor than ever it will go on agitating, educating and organizing the workers for peaceful social change.

"Socialists will not be goaded into violence or driven underground. These have never been the methods of Socialism. Always and everywhere it has waged

its fight in the open, and where this opportunity has been denied it has ceaselessly fought for political democracy.

"We shall go back to our districts with complete confidence. The people who sent us here knew us, and they will repeat their sovereign will in overwhelming numbers."

Each of the remaining expelled Assemblymen expressed himself to the same effect.

The new despotism promulgated by this verdict shocked those citizens who still believed that representative government was supreme in the United States. Various public men stated their surprise and concern. Among these was ex-Justice Hughes, who said:

"I do not care to speak of the action of the Assembly in a casual or flippant manner. I regard it as a serious blow at the standards of true Americanism and nothing short of a calamity. Those who make their patriotism a vehicle for intolerance are very dangerous friends of our institutions. I expressed my views on this question at the outset and I have seen no reason to change them."

Louis Marshall, well known as a constitutional lawyer, said:

"This is the saddest day in the history of the State of New York. If the precedent set by this action is to continue, it will wipe out every vestige of representative government in this state. The action of the Assembly is an action of anarchy, infinitely worse than anything that has been charged up against the Socialists.

"The men who are responsible for this action are deplorably short-sighted and committed this outrage without regard for the future. They did it, I am satisfied, for the sole purpose of furthering their own po-

litical ends. If this action is permitted to stand it means a return to the Middle Ages, to that period in English history when there was no conception of representative government."

Ogden L. Mills made this statement:

"I have read the entire record of the proceedings very carefully and I have read nothing that in my judgment justified the expulsion of the Socialists."

Mr. Hillquit, chief counsel for the defense, received the news at his home at Saranac Lake, New York. Said he:

"The action of the Assembly was a brutal lynching of the Constitution. The black 116 in the Assembly have settled nothing. They have outraged the sense of decency of all thinking members of the community and brought home to them the realization of the dangers of reactionary mob government.

"Henceforward it will be a finish fight between social democracy and capitalist absolutism. The fight is only beginning. The Socialists are ready for it."

The day after the expulsion The New York World in an editorial entitled "A Legislative Lynching" declared:

"If the people of New York are to retain their free institutions, if they are not to be Russianized by their stupid politicians, their first concern must be the restoration of representative government which was overthrown yesterday in Albany by the Assembly."

The day following the same newspaper, under the title of "Nothing Short of a Calamity, said editorially:

"No more lawless act was ever committed by a law-making body than that which stains the record of the New York Assembly. In all the history of representative government there is no other instance of a political party's expulsion from a legislative body. Individ-

ual members have been excluded on one ground or another, but in this case a lawfully constituted political party was brought before the bar of the Assembly and denied representation on the ground that its platform was objectionable to the majority. . . .

"The security of free institutions depends upon the complete subjection of political and economic discontent to the constitutional processes of government. There can be no security on any other terms. There is no menace in the radicalism that takes its grievances to the ballot box, but the radicalism that is denied access to the ballot box becomes a continuing menace, and any set of men responsible for such denial have committed a crime against the public welfare and a crime against popular government, whatever excuses they may give for their conduct."

The rest of the more liberal newspapers echoed similar sentiments.

On April 1, 1920, therefore, a new page in American history was turned. While the world was going forward, the ruling powers had set our State two centuries back. Once more the people of the State were called upon to answer the question: "Shall government of the people, by the people, and for the people survive?"

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